

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

Docket
No.

76-1567

In The
United States Court of Appeals
For the Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

— vs. —

DAVID BRYANT,

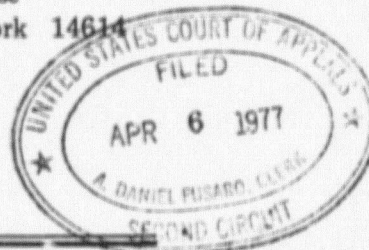
Defendant-Appellant.

Appeal From The United States District Court
For The Western District of New York

APPENDIX FOR APPELLEE

RICHARD J. ARCARA
United States Attorney for the
Western District of New York
Attorney for Appellee
233 U.S. Courthouse
Rochester, New York 14614

GERALD J. HOULIHAN
Assistant United States Attorney
Of Counsel



PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	Page
Excerpts from Trial Transcript	1

WITNESSES FOR THE GOVERNMENT:

Excerpts — Vol. I:

Richard F. Foley —	
Direct	2
Gwendolyn Alberta Walters —	
Direct	10
Cross	14
Redirect	21
Douglas Michael Quinn —	
Direct	22
Cross	27
Stella Alice Bynoe —	
Direct	30
Cross	34
Redirect	39
Peter Jacobson —	
Direct	40

Excerpts — Vol. II:

Douglas M. Quinn —	
Direct	47, 56
Preliminary	55
Cross	57
Redirect	65
Stella Alice Bynoe —	
Direct	68
Cross	77
Redirect	84
Recross	85

	Page
Gwendolyn Alberta Walters —	
Direct	87
Cross	89
Redirect	92
<u>Excerpts — Vol. III:</u>	
Donna M. Vickers —	
Direct	95
Cross	105
Redirect	114

EXCERPTS FROM TRIAL TRANSCRIPT.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

- vs -

Cr. 75-190

DAVID BRYANT,

Defendant

Motion to suppress in the above entitled action held
before the HON. JOHN T. ELFVIN, United States District Judge,
in and for the Western District of New York, at Rochester,
New York, on November 1, 1976.

APPEARANCES:

RICHARD J. ARCARA, ESQ.,
United States Attorney by
GERALD J. HOULIHAN, ESQ.
Ass't. United States Attorney,
Appearing on behalf of the Government.

ALFRED P. KREMER, ESQ.,
Appearing on behalf of the Defendant.

* * * * *

Excerpts from Trial Transcript (Vol. I).
Richard F. Foley for Government, Direct.

* * * * *

6

cation, whether there was any intimidation
on the part of the police.

THE COURT: All right.

MR. HOULIHAN: The suppression of the statement, I have one
witness with regard to that, and I can call
him first. The Government's first witness
is Richard Foley.

RICHARD F. FOLEY, 9 Briar Lane,
Rochester, New York, called as a witness on behalf of the
Government, and being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOULIHAN:

Q Mr. Foley, by whom are you employed?

A I am employed by the Federal Bureau of Investigation.

Q How long have you worked for the FBI?

A I have been employed as a special agent with the FBI
for ten years.

Q And where is your duty station?

A I am assigned to the Rochester, New York office of the
FBI.

Q In the course of your duties as a special agent, did
there come a time that you interviewed David Bryant?

A Yes, sir, I did.

Q When was that?

A I spoke with Mr. Bryant on June 23, 1975.

Excerpts from Trial Transcript (Vol. I).
Richard F. Foley for Government, Direct.

7

- Q And where did you speak with him?
- A At the Monroe County Jail.
- Q Was he an inmate at the jail at that time?
- A That is correct.
- Q At the time that you saw him at the jail, did you have a conversation with him where you outlined the reason for your being there?
- A Yes. I told him that I was there to investigate a bank robbery which had occurred at the Lincoln First Bank.
- Q What date was the bank robbery?
- A June 20, 1975.
- Q So this was some three days after the bank robbery?
- A That is correct.
- Q The FBI has an advice and waiver form, is that right?
- A Yes, that is correct.
- Q Do you have that with you?
- A I do.

MR. HOULIHAN: May I have this marked?

(Thereupon, document referred to was marked
Government's Exhibit 1 for identification.)

BY MR. HOULIHAN:

- Q I show you Government's Exhibit 1 marked for identification, can you tell us what that is?

BEST COPY AVAILABLE

Excerpts from Trial Transcript (Vol. I).
Richard F. Foley for Government, Direct.

3

A That is the Advice of Rights Form which I gave to Mr. Bryant when I conducted an interview with him on June 23, 1975.

Q And did you read that form for him?

A I gave him that form and asked him to read it, and asked if he had any questions concerning the form, and he said he did not.

Q And did you ask him to sign it?

A Yes, I did.

MR. KREMER: Objection, your Honor. This is all leading.

THE COURT: That is right, it is leading.

BY MR. HOULIHAN:

Q What, if anything, did you say to him after you asked if he had any questions about it?

A I asked him if he would sign the form.

Q What did he say?

A He said he did not wish to sign anything.

Q Did he say anything else with regard to his rights?

A No, sir. After I asked him if he understood what was on the form and what was said on the form, there was no other questions concerning his rights, no.

Q Subsequent to the conversation concerning the advice of rights and waiver of rights, did you have any further conversation with Mr. Bryant?

A The first part of the conversation or interview with Mr.

Excerpts from Trial Transcript (Vol. I).
Richard F. Foley for Government, Direct.

Bryant consisted mainly --

MR. KREMER: Not responsive, your Honor.

THE COURT: Yes, sustained. Listen to the question.

THE WITNESS: Yes, sir.

BY MR. HOULIHAN:

Q Would you please advise the Court what conversation took place between you and Mr. Bryant after the signing of the -- or his declination of signing the Interrogation and Advice of Rights Form?

A We -- there was another agent with me, Special Agent Joe Cain, and we talked to Mr. Bryant about the bank robbery, and Mr. Bryant wanted to know what options were available to him. We spent a fair amount of time just talking about what possibilities were available to Mr. Bryant.

Q During the course of this interview did you show Mr. Bryant any photographs?

A I had a group of four photographs which I displayed to Mr. Bryant.

MR. HOULIHAN: Would you mark these for identification?

(Thereupon, photographs referred to were marked Government's Exhibits 2 through 5 for identification.)

BY MR. HOULIHAN:

Excerpts from Trial Transcript (Vol. I).
Richard F. Foley for Government, Direct.

10

Q I show you Government's Exhibits 2, 3, 4 and 5 marked for identification, and can you identify those photographs?

A Yes, sir. These are the four photographs which I showed to Mr. Bryant.

Q And did you have any conversation regarding those -- did he make any statements regarding those photographs?

A I numbered the photographs, for my own information, 1 through 4, after Mr. Bryant looked at --

THE COURT: Figures 2, 3, 4?

MR. HOULIHAN: Our Exhibit numbers are 2, 3, 4 and 5.

BY MR. HOULIHAN:

Q Okay.

A After I showed Mr. Bryant the photographs, which I had numbered 1 and 2, I asked him if he recognized anybody in the photographs.

THE COURT: What are the counterpart numbers, what are the Government Exhibit numbers?

THE WITNESS: Government Exhibits 2 and 3.

THE COURT: All right, use those, please.

THE WITNESS: Okay. Mr. Bryant said that the individual depicted in both these photographs resembled himself.

BY MR. HOULIHAN:

Q And was there any other conversation regarding that

Excerpts from Trial Transcript (Vol. I).
Richard F. Foley for Government, Direct.

particular photograph?

MR. KREMER: I object to the form of the question.

THE COURT: Overruled.

MR. KREMER: Would you read that last question back, please?

(Thereupon, the last question was read
by reporter.)

MR. KREMER: He talked about two different photographs.

MR. HOULIHAN: Those particular photographs.

MR. KREMER: Thank you, sir.

THE COURT: You can answer that yes or no, Mr. Foley.

THE WITNESS: There was subsequent conversation after I
showed Mr. Bryant the other two photographs.

BY MR. HOULIHAN:

Q Let me call your attention to -- I better mark it --

(Thereupon, document referred to was marked
Government's Exhibit 6 for identification.)

BY MR. HOULIHAN:

Q I show you Government's Exhibit 6 marked for identifica-
tion, and ask you if that refreshes your recollection
regarding a conversation relative to the photographs,
Government's Exhibits 2 and 3?

A Yes, sir, there was subsequent conversation with Mr.

Bryant. We asked him specifically --

MR. KREMER: Objection, not responsive.

BY MR. HOULIHAN:

Q What was that conversation?

A The conversation was -- Mr. Bryant said that that couldn't be him depicted in the photographs as he had eleven people who could verify his activities on that date.

Q Did you have a conversation with him regarding the individuals in Government's Exhibit 4 and Government's Exhibit 5?

A Yes, I did.

Q And relative to Government's Exhibit 4, what was the conversation?

A Can I see my 302, please? Concerning Government's Exhibit 4, Mr. Bryant didn't say specifically who was depicted in that photograph, but he did say that both the individuals in Government's Exhibit 4 and Government's Exhibit 5 resembled the people who have been charged by the Rochester Police Department.

Q At the time that you interviewed Mr. Bryant, and prior to the time that he made this statement to you regarding the identification of the photographs and the people in the photographs, did you have any conversation about his right not to talk with you?

Excerpts from Trial Transcript (Vol. I).
Richard F. Foley for Government, Direct.

13

MR. KREMER: Objection, leading.

MR. HOULIHAN: Your Honor, I have to direct his attention to the subject.

THE COURT: We have already gone through the advice of rights, haven't we?

MR. HOULIAHN: Yes, your Honor. I will withdraw the question and let defense counsel cross-examine.

CROSS-EXAMINATION BY MR. KREMER:

Q Sir, you were one of several agents that were working on this investigation, is not that correct?

A That is correct.

Q With respect to your interview with the person, with Mr. Bryant, did you make any handwritten notes of this particular interview prior to preparing the 302?

A I took handwritten notes of the interview, yes, sir.

Q Do you have those with you?

A No, sir, I do not.

Q Are they upstairs in the office?

A No, sir, they are not.

MR. KREMER: Your Honor, in accordance with the newly decided case of United States versus Harris, it is a Ninth Circuit case, reported October 20, 1976 in the Criminal Law Reporter at Page 20, CPL 2049, I would ask that these notes be produced. It is the thrust of that

* * * * *

Excerpts from Trial Transcript (Vol. I).
Gwendolyn Alberta Walters for Government, Direct.

32

MR. HOULIHAN: That is all I have.

MR. KREMER: I have nothing further of this gentleman at
this time, your Honor.

(Witness excused.)

MR. HOULIHAN: I would like to call Gwendolyn Walters. Do
you want us to argue the admissibility of this
statement at this time or do you want to take
the further testimony on the identification?

THE COURT: We might as well take both at once, I think.

GWENDOLYN ALBERTA WALTERS ,
377 Maple Street, Rochester, New York, called as a witness on
behalf of the Government, and being first duly sworn, testi-
fied as follows:

DIRECT EXAMINATION BY MR. HOULIHAN:

Q Miss Walters, I direct your attention to the date of
September 29, 1975, did there come a time on that day
that you were interviewed by an FBI agent by the name
of Peter Alan Jacobson?

A I don't remember his name, but I was interviewed by an
agent.

Q You were interviewed by the FBI?

A Right.

Q And at the time of that interview were you alone?

Excerpts from Trial Transcript (Vol. I).
Gwendolyn Alberta Walters for Government, Direct.

33

A No.

Q Who was with you?

A Well, my boy friend was there.

Q Was --

MR. KREMER: I didn't hear the last answer.

THE COURT: "My boy friend was there."

MR. KREMER: Thank you.

BY MR. HOULIHAN:

Q And there was an FBI agent there, is that right?

A Right.

Q Was he alone?

A Yes.

Q And he showed you some photographs, is that correct?

A That's right.

Q And at the time that he showed you the photographs were you able to recognize anyone in those photographs?

A Yes, I did.

MR. HOULIHAN: Will you mark these for identification, please?

(Thereupon, photographs referred to were
marked Government's Exhibits 7 through 10.)

BY MR. HOULIHAN:

Q Miss Walters, I show you Government's Exhibit 10 marked
for identification, were you shown that photograph by

Excerpts from Trial Transcript (Vol. I).
Gwendolyn Alberta Walters for Government, Direct.

34

Mr. Jacobson?

A. Yes, sir.

Q. And you identified that individual --

A. Yes.

Q. -- to him?

A. Yes.

Q. Who was that?

A. Harold Alexander.

Q. He is your brother?

A. Right.

Q. And you were shown other photographs at that time. I show you Government's Exhibit 9 marked for identification, were you shown that photograph?

A. Yes, I was.

Q. Were you able to identify that individual?

A. No, I was not.

Q. Showing you Government's Exhibit 8 marked for identification, were you shown that photograph?

A. Yes, I was.

Q. Were you able to identify that individual that appears in that photograph?

A. Yes, but not by the name that the FBI referred to.

Q. Who was the individual that you know as shown in that photograph?

A. Randy Johnson.

Excerpts from Trial Transcript (Vol. I).
Gwendolyn Alberta Walters for Government, Direct.

32

Q And how long prior to the time you identified that photograph, how long had you known Randy Johnson?

A Maybe two years.

Q And --

MR. KREMER: Excuse me, two years?

THE COURT: Two years.

MR. KREMER: Thank you.

BY MR. HOULIHAN:

Q Did there come a time that you learned that Randy Johnson also went by a different name?

A Right.

Q What was that name?

A David Bryant.

Q And I ask you to look around the courtroom and see if there is anyone here that you know as Randy Johnson?

A Yes.

Q And where is he seated?

A At the table over there.

Q The only black person in the courtroom, as a matter of fact?

A That is right.

Q Okay. I show you Government's Exhibit 7 marked for identification, were you shown that photograph?

A I believe so.

Q And do you know who that is?

Exceprts from Trial Transcript (Vol. I).
Gwendolyn Alberta Walters for Government, Cross.

A. Yes, that is David Bryant.

Q. Now, at the time that you were interviewed by the FBI agent, you told him that the person in the photograph was a person that you knew as Randy Johnson, is that right?

A. Right.

MR. HOULIHAN: I have no further questions.

CROSS-EXAMINATION BY MR. KREMER:

Q. Miss Walters, do you recollect when this identification took place?

A. You mean the day?

Q. Yes, ma'am.

A. Well, I could not tell you the date but --

Q. Do you remember the month by chance?

A. I believe it was -- I'm not sure, I don't know.

Q. And where did you look at these pictures?

A. At my home.

Q. And someone had come to see you there, is that not correct?

A. That is correct.

Q. And had this person called in advance to tell you that he was coming?

A. No.

Q. He just showed up one day?

A. Right.

Excerpt from Trial Transcript (Vol. I).
Gwendolyn Alberta Walters for Government, Cross.

37

- Q Did he show you his identification?
- A Yes, he did.
- Q Said he was from the FBI?
- A Right.
- Q And what did he tell you that he wanted to do?
- A Well, I was on the porch, he told me he had some pictures he wanted me to look at, I could look at them outside or he could come in the house.
- Q Now, what did he tell you that the pictures were?
- A He told me it was concerning the bank robbery.
- Q Did he tell you which bank robbery?
- A No.
- Q He just said he wanted to show you some pictures concerning a bank robbery?
- A Yes. I don't remember the exact conversation that I had with him, it was quite a while ago.
- Q And do you know how long the conversation took prior to your looking at the pictures?
- A Well, I was debating whether I should let him come into the house and look at the pictures, and my friend said, "Let him come in the house," and so I sat down and talked to him.
- Q Now, you had previously known that your brother had been charged with bank robbery, hadn't you?
- A Right.

Exceptrs from Trial Transcript (Vol. I).
Gwendolyn Alberta Walters for Government, Cross.

36

- Q And had you been advised by anybody that they had identified your brother as being one of the bank robbers?
- A I don't understand the question.
- Q Had anybody told you prior to seeing the FBI man that your brother had been identified by somebody?
- A That my brother was identified by somebody else?
- Q Yes.
- A To anyone else?
- Q Yes.
- A To the FBI or what?
- Q Sure.
- A Well, I knew the people said my brother was in the bank robbery.
- Q And you were quite concern about your brother, is that not correct?
- A Yes, I was.
- Q And when the FBI man came to talk with you, he told you he had some pictures about a bank robbery, you knew what bank robbery he was talking about, did you not?
- A Yes.
- Q How many pictures did he bring with him?
- A I don't know.
- Q Well, as best you recollect, were there four pictures?
- A There could be four or more than four, I really don't know.

Excerpt from Trial Transcript (Vol. I).
Gwendolyn Alberta Walters for Government, Cross.

39

Q Could it have been more than ten?

A No, I don't think it was that many pictures. It could have been -- I'm not sure.

Q Okay. Your best recollection is somewhere between four and ten, but it could have been more, is that your best recollection?

A Yes.

Q And then there came a time when you went into the house to look at the pictures?

A Right.

Q Now, you looked at these pictures one at a time, did you not?

A Yes.

Q They were not just spread out on a table, they were handed to you one at a time?

A Right.

Q And the special agent talked to you as he handed each one to you, did he not?

A Yes, right.

Q Did he say to you, for example with respect to Exhibit No. 10, did he say, 'Is this your brother, Harold Alexander, is that Sonny?'

A I'm not sure how he worded it. He could have said that, he could have asked who it was.

Q Now, do you remember seeing that particular picture of

Excerpt from Trial Transcript (Vol. I).
Gwendolyn Alberta Walters for Government, Cross.

40

your brother, identified as Exhibit 10?

A. You mean this same picture, the same size?

Q. Yes, ma'am.

A. I don't think the pictures that he had were that big, I think they were smaller.

Q. So that Exhibit No. 10 which is an eight by ten photograph, you are saying today is bigger than the one actually shown to you?

A. Yes, they were smaller pictures than that.

Q. I am going to show you Exhibit 7, 8 and 9, and these pictures are approximately four by four or four by five, are these about the size of the pictures that you were shown?

A. Maybe they could have been a little bigger than that.

Q. Is it possible that the pictures were all of different sizes?

A. They could have been.

Q. Could have been?

A. Yes.

Q. Now, you identified -- No. 9 you said you could not identify, and this is No. 9, correct?

A. Right.

Q. And did the special agent ask some questions about No. 9 as you were looking at it?

A. Yes, he did.

Exceptrs from Trial Transcript (Vol. I).
Gwendolyn Alberta Walters for Government, Cross.

41

Q Did he say, 'Does this look like Elisha Abrams?'

A Yes.

Q And he was interested in identifying Elisha Abrams?

A Right.

Q And with respect to Exhibit 7 and Exhibit 8, you say that you knew that particular individual as a Randy Johnson, correct?

A Correct.

Q And you told me that the agent didn't know who Randy Johnson was, is that correct?

A Well, he told me that it was David Bryant, that it was the same person.

Q I see. Did he tell you this while you were looking at those photographs?

A Right, because I told him that I didn't know a David Bryant at that time, that wasn't -- I didn't know who David Bryant was, that was Randy Johnson.

Q If he didn't tell you that that person was David Bryant, you wouldn't have known that, would you?

A No, I wouldn't have known which person they were referring to as David Bryant, no.

Q Do you recollect how much time the FBI man spent with you during the time that you were talking with him?

A Between half hour.

Q Was that inside the house and outside the house or was

Exceprts from Trial Transcript (Vol. I).
Gwendolyn Alberta Walters for Government, Cross.

42

that --

A He stayed about a half an hour altogether.

Q Fine. And in substance then it is your testimony that you saw at least these four pictures, is that correct?

A I believe so.

Q And you saw some others, you may have seen some others?

A I seen an FBI poster on my brother, he showed me that.

Q There were pictures on the FBI poster?

A Yes, you know, one of those that you hang up in the building with the picture on it, wanted.

Q I see. And were any of the names -- whose name was on that wanted picture, do you recall?

A Harold Alexander.

Q And was Randy Johnson on one of these wanted pictures?

A I don't believe so.

Q Harold Alexander was on this wanted picture?

A Right.

Q It talked about this particular bank robbery, is that correct?

A Right.

Q Were there any other wanted photographs or circulars that the agent showed to you?

A No.

Q So it was the photographs plus the wanted for bank robbery circular that was shown to you?

Excerpts from Trial Transcript (Vol. I).
Gwendolyn Alberta Walters for Government, Redirect.

43

A. Right.

Q. When the special agent showed you the picture of Randy Johnson, he said to you in substance, as you were looking at them, 'This is David Bryant,' is that not right?

A. Right.

MR. KREMER: Fine. Thank you. I have no further questions of this witness.

REDIRECT EXAMINATION BY MR. HOULIHAN:

Q. Did the special agent when he said, 'This is David Bryant,' did he tell you that before you had identified it as Randy Johnson or after that?

A. I really don't remember.

Q. There is no question in your mind that the person shown on Government's Exhibit 8 is Randy Johnson, is that right?

A. That is right.

Q. There is no question in your mind today sitting here that the black man seated with Mr. Kremer at the table is the person you know as Randy Johnson?

A. Right.

MR. HOULIHAN: No further questions.

MR. KREMER: Thank you, we're.

(Witness excused.)

Excerpts from Trial Transcript (Vol. I).
Douglas Michael Quinn for Government, Direct.

41

MR. HOULIHAN: Your Honor, when are we going to start the trial?

THE COURT: I'm not sure. I am tied up in a trial now in Buffalo, which is going to pick up tomorrow morning again, and I don't know whether I will be free of that Friday or whether I won't be.

MR. HOULIHAN: It wouldn't be before Monday anyway?

THE COURT: Well, I would doubt it. Friday remains a possibility.

MR. KREMER: Your Honor, I may have to be in the Erie County Supreme Court on another related matter.

THE COURT: On Friday?

MR. KREMER: Yes.

THE COURT: All right.

MR. KREMER: Monday I am available at the Court's pleasure.

MR. HOULIHAN: The Government calls Douglas Quinn.

DOUGLAS MICHAEL QUINN, 112 Kenwood Avenue, Rochester, New York, called as a witness on behalf of the Government, and being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOULIHAN:

Q Mr. Quinn, where do you live?

Excerpts from Trial Transcript (Vol. I).
Douglas Michael Quinn for Government, Direct.

45

A 119 Kenwood Avenue.

Q How long have you lived there?

A About seven or eight months.

Q Prior to that time where did you live?

A On Robert Street, 117 Robert.

Q At any time during the past two years did you live at
118 Aberdeen Street?

A Yes.

Q Who did you reside there with?

A I resided there with Lorraine Alexander, David Bryant
and Harold Alexander.

Q I direct your attention to the date of June 24, 1975,
were you interviewed by the FBI on that date?

THE COURT: What date was that?

MR. HOULIHAN: June 24, 1975, your Honor.

THE WITNESS: What date? I mean I don't know the day. I
was interviewed by the FBI a number of times.

BY MR. HOULIHAN:

Q Okay. And one of them was -- this was in connection
with the bank robbery, is that right?

A Right.

Q That occurred on June 20?

A Right.

Q And several days after that you were interviewed by two
agents of the FBI?

Excerpts from Trial Transcript (Vol. I).
Douglas Michael Quinn for Government, Direct.

46

A Yes.

Q And at that time they showed you photographs?

A No, they showed me photographs on June 20.

Q They also showed you photographs on June 20?

A Yes.

Q Okay. And you identified an individual shown in those photographs, is that right?

A I said who it looked like to me.

Q And then on the 24th you were shown the same photographs again, and you were asked again to identify the people in the photographs, is that right?

A Was that the day they had the grand jury, too?

Q No. You were asked to initial the photographs on that day, do you remember that?

A I initialed them on the 20th.

MR. HOULIHAN: Would you mark these for identification?

(Thereupon, photographs referred to were marked Government's Exhibits 11 through 15 for identification.)

BY MR. HOULIHAN:

Q I will show you Government's Exhibit 11 marked for identification, were you shown that photograph in June?

A Yes, I was.

Excerpts from Trial Transcript (Vol. I).
Douglas Michael Quinn for Government, Direct.

47

Q And there are initials that appear, D.Q., is that your initials?

A Yes.

Q And you identified that individual as who?

A I said that looks like Harold Alexander.

Q I show you Government's Exhibit 12 marked for identification, it has initials on the back, D.Q., are those your initials?

A Yes.

Q Did you identify the individual shown in that photograph?

A Yes, I said it looks like Elisha Abrams.

Q I show you Government's Exhibit 13 marked for identification, it has D.Q. on the back, are those your initials?

A Yes.

Q And were you asked to identify the individual shown in that photograph?

A Yes. I said that looks like Elisha Abrams.

Q And I show you Government's Exhibit 14 marked for identification, that has D.Q. on the back, are those your initials?

A Yes.

Q And did you identify the individual shown on that photograph?

A Yes.

Excerpts from Trial Transcript (Vol. I).
Douglas Michael Quinn for Government, Direct.

48

Q As who?

A I said this looks like a few people, that it looked most likely to me David Bryant.

Q Are you saying that you did not tell him positively that was David Bryant that day?

A I never positively identified them, I said they looked to me like David Bryant and Elisha Abrams and Harold Alexander.

Q Is that your feeling today that the person shown in that photograph looks like David Bryant?

A Yes.

Q I show you Government's Exhibit 15 marked for identification, which is a statement signed by you, is that right, is that your signature, Doug Quinn?

A Yes.

Q And it was dated June 24, 1975, is that right?

A Yes.

Q And would you please read the statement for the Court?

A "I, Doug Quinn, have viewed bank photographs taken on June 20, 1975, at the Lincoln First Bank of Rochester, 1130 East Main Street, Rochester, New York, of these individuals. I am positive and identified them as David Bryant, Sonny Alexander and Wolf Abrams. I have initialed the back of each photograph. Doug Quinn. Joe Cain and Joseph R. Corcoran, special agents of the FBI."

Excerpts from Trial Transcript (Vol. I).
Douglas Michael Quinn for Government, Cross.

49

Q This statement was taken on June 24, 1975?

A Yes.

Q That is your signature?

A Yes.

Q In that statement you positively identified them as
David Bryant, Sonny Alexander and Wolf Abrams?

MR. KREMER: Objection, the statement speaks for itself.

THE COURT: Go ahead.

BY MR. HOULIHAN:

Q You may answer.

A I said it looks like them, right.

Q At the time that you were shown these photographs, did
the FBI suggest any names to you?

A No.

MR. KREMER: Objection, the word "suggest" is a conclusion.

THE COURT: No, overruled.

THE WITNESS: No.

BY MR. HOULIHAN:

Q Did they tell you who they thought was in those photo-
graphs?

A No.

Q They were just asking you if you knew?

A Right.

MR. HOULIHAN: I have no further questions.

CROSS-EXAMINATION BY MR. KREMER:

Excerpts from Trial Transcript (Vol. I).
Douglas Michael Quinn for Government, Cross.

50

- Q Mr. Quinn, prior to your speaking with the FBI men, you spoke with the Rochester City Police Department, did you not, sir?
- A Yes, sir.
- Q And they showed you these photographs, did they not?
- A Yes.
- Q I want you to take a close look and see if these are the same ones that the Rochester Police Department showed you.
- A They look about the same.
- Q And did the Rochester Police Department suggest any names to you?
- A No, they didn't.
- Q And how many pictures did they show you, the Rochester Police Department?
- A There was a number. There was these plus some other shots, I don't remember offhand.
- Q How many photographs in all did it amount to, sir, as best you recollect today?
- A Somewhere around seven or eight maybe.
- Q Seven or eight?
- A Yes.
- Q And when the Rochester Police Department came in and talked to you, what did they say to you about these photographs?

Excerpts from Trial Transcript (Vol. I).
Douglas Michael Quinn for Government, Cross.

51

- A. They said they were waiting for their pictures to come out from the bank robbery to see if I was involved in it, and then they showed me these pictures and asked me do I recognize any of the individuals.
- Q. Just like that?
- A. Right.
- Q. Sir, as best you can, we are talking about the events of a long time ago, how much time did you spend looking at those pictures when the Rochester police showed them to you?
- A. Oh, I looked at them for quite sometime. It took me a while because when they first showed them to me I was tired and hungry, I wasn't thinking about looking at pictures too much. When I looked at these I spent quite a bit of time on this particular one.
- Q. You are pointing to No. 14?
- A. Yes. I remember specifically this one. I looked at that, it looked like a lot of people. It looked a little bit like me.
- Q. Sir, again in terms of time, can you guess, what your best guess would be of how much time you spent looking at these when you were in the Rochester Police Department?
- A. Five to ten minutes probably.
- Q. Then you saw this array again when you were speaking with the FBI, is that correct?

Excerpts from Trial Transcript (Vol. I).
Stella Alice Bynoe for Government, Direct.

52

A Right.

Q You went through essentially the same identification for them, did you not?

A Right. Yes, I did.

Q And approximately how much time did you spend looking at the array with the FBI?

A About a minute.

MR. KRFMER: Fine, thank you. I have no further questions of this gentleman.

MR. HOULIHAN: I have no further questions.

THE COURT: Thank you.

(Witness excused.)

STELLA ALICE BYNOE, 381 Frost Avenue, Rochester, New York, called as a witness on behalf of the Government, and being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOULIHAN:

Q Miss Bynoe, did there come a time in August of 1975 that you were interviewed by an agent of the FBI?

A Yes, sir.

Q And where was that?

A Well, they had come to my house looking for me. I had gone downtown and when I came back I was given the mes-

Excerpts from Trial Transcript (Vol. I).
Stella Alice Bynoe for Government, Direct.

53

sage so I called a Mr. Jacobson, and we set up an appointment, and I went down to see him here in the Federal Building.

Q At that time did he show you some photographs?

A Yes, sir.

Q And were they large photographs or small?

A They were eight by ten, black and white, glossy.

Q I show you Government's Exhibit 10 marked for identification, were you shown that photograph?

A Yes, sir.

Q And did you identify that individual?

A Yes, sir.

Q And who is that?

A My brother.

Q And that is Sonny Alexander?

A Yes.

MR. HOULIHAN: Will you mark these for identification?

(Thereupon, photographs referred to were marked Government's Exhibits 16 and 17 for identification.)

BY MR. HOULIHAN:

Q I show you Government's Exhibit 16 marked for identification, were you shown that photograph on that day?

Excerpts from Trial Transcript (Vol. I).
Stella Alice Bynoe for Government, Direct.

54

- A. No, sir.
- Q. You were not?
- A. No, sir.
- Q. Were you shown any photographs similar to that?
- A. The photo that I was shown was a person leaping over a teller's cage.
- Q. Leaping over a teller's cage?
- A. Whether they were going over or coming back, I don't know. That is the picture I saw.
- Q. That is the one you recall now?
- A. Yes, sir.
- Q. On that day were you shown a photograph of a person, as you recall, leaping over or coming down from a teller's cage, depicting the individual that is shown in Exhibit 16?
- A. The person looked the same.
- Q. Who is that person, who did you identify that person as?
- A. Randy.
- Q. And do you know Randy by any other name?
- A. That was the name that I knew him by until that time, and then I was told he had another name.
- Q. Do you see Randy in the courtroom?
- A. Yes.
- Q. Where is he seated?
- A. Across there.

Excerpts from Trial Transcript (Vol. I).
Stella Alice Bynoe for Government, Direct.

55

Q With Mr. Kremer, the only black in the courtroom, other than yourself, is that right?

A Yes.

Q Then after you identified that person as Randy, then the FBI agent told you that his name was David Bryant?

A He called him by that name.

Q And it wasn't until after you said it was Randy that he said it was David Bryant?

A That was the only name I knew him as.

Q Thank you. You were also shown Government's Exhibit 17 marked for identification?

A Yes, sir.

Q And you identified that person, did you not?

A I only know the person by one name, that is the only way I could identify him.

Q And what is that name?

A All I know is Wolf.

Q At the time that you went to the FBI, that was at the office down here, is that right?

A Yes, sir.

Q On the third floor of the Federal Building?

A Yes, sir.

Q And prior to the time that you identified that photograph showing the person that you know as Randy, how long had you known Randy?

Excerpts from Trial Transcript (Vol. I).
Stella Alice Bynoe for Government, Cross.

50

A I can't say exactly how long I have known him.

Q Longer than a year?

A Yes.

Q And he was a friend of your brother's, is that right?

A When I met him he was a friend of my daughter's and I.

Q It was before that that he became friendly with your brother, Sonny?

A Yes, I guess so. My brother and I were not that close.

MR. HOULIHAN: Thank you. I have no further questions.

CROSS-EXAMINATION BY MR. KREMER:

Q Ma'am, Agent Jacobson made an appointment for you to come down and see him?

A No, sir, I made the appointment with Mr. Jacobson to come down and see him.

Q He told you why he wanted to see you?

A No, sir.

Q You just made an appointment to come down, like that?

A Yes, sir.

Q Just said --

A I didn't want --

Q Excuse me, ma'am. I don't mean to interrupt but let's see if you can answer my questions, and if there is any problem Mr. Houlihan will be happy to help you.

A Yes, sir.

Q Is it your testimony that you and Agent Jacobson just

Excerpts from Trial Transcript (Vol. I).
Stella Alice Bynoe for Government, Cross.

57

made an appointment for you to come down and see him?

A Yes, sir.

Q And did he communicate the reason why he wanted you to come down?

A The message was left for me, and I knew what it was about, that's why I made the appointment.

Q Did he tell you what it was about?

A Yes, sir.

Q He told you that he wanted you to identify some photographs?

A No, sir, he didn't specifically say that.

Q He said he wanted you to look at some pictures?

A He wanted to talk to me.

Q Did he tell you what he wanted to talk to you about?

A It was in regard to the bank robbery.

Q You knew which bank robbery he was talking about?

A Well, it was the most recent one that happened, I knew what that was about.

Q From what Agent Jacobson told you?

A No, from the news reports and reading it in the papers.

Q You knew that your brother had been charged with bank robbery, is that correct?

A Yes, I heard the rumor.

Q And you knew even before the telephone call came that he had been charged with bank robbery?

- A I already heard that the FBI was going around talking to our family.
- Q You knew that the FBI was showing photographs to members of the family?
- A No, sir, I didn't.
- Q You knew at least that they were talking to members of your family?
- A Yes, sir.
- Q You knew that your brother was implicated, is that not correct?
- A Yes, sir.
- Q Is it your statement that when you were first shown a photograph of your brother here in this building that that was the first time you knew that you were going to see photographs of your brother?
- A Yes, sir.
- Q And you hadn't received any statement from any other individual that had told you they had looked at photographs of your brother?
- A No, sir.
- Q You have indicated that you were shown a picture of your brother and you identified him, correct?
- A Yes, sir.
- Q When you were shown this photograph what, if anything, did Agent Jacobson say when he showed it to you?

Excerpts from Trial Transcript (Vol. I).
Stella Alice Bynoe for Government, Cross.

59

- A He said nothing.
- Q And did you look at a group of pictures or did he hand you a picture and say, 'Look at this.'?
- A He handed me a folder with some pictures in it.
- Q And how many pictures were there in the folder?
- A Oh, I don't know exactly how many there was in it, I didn't count them.
- Q Were there less than ten?
- A I don't know.
- Q Then did you look at the back of the pictures?
- A No, sir.
- Q Just looked at the front?
- A Yes.
- Q And on the back is written Harold "Sonny" Alexander, you see the writing there?
- A Yes, sir.
- Q And do you know whether that was on the photograph at the time that you looked at it?
- A No, sir.
- Q No it wasn't or --
- A No, I don't know if it was on the back of it.
- Q I see. With respect to Exhibit No. 16, you said that you were not shown that?
- A No, sir.
- Q You were shown that?

Excerpts from Trial Transcript (Vol. I).
Stella Alice Bynoe for Government, Cross.

60

A. No, sir.

Q. No. So that again you were not shown that picture, correct?

A. No, sir.

Q. Okay. And with respect to Exhibit 17, were you shown Exhibit 17?

A. Yes, sir.

Q. And you said that the man portrayed holding a weapon and a bag is who?

A. I looked at the face, that's all I seen.

Q. Sure.

A. I said it was Wolf.

Q. Wolf. Now, just on direct examination Mr. Houlihan showed you three photographs. He showed you Exhibit 10, we agree that is your brother, is that correct?

A. Yes, sir.

Q. Okay. And then you were shown Exhibit 16 and you said that you were not shown that exhibit before, correct?

A. That is right.

Q. And so today is the first day that you were seeing this picture?

A. Yes.

Q. You say that you know the individual is who is portrayed in this picture?

A. Yes, sir.

Excerpts from Trial Transcript (Vol. I).
Stella Alice Bynoe for Government, Redirect.

61

Q But again today is the first day that you were seeing it, correct?

A Correct.

Q And then Exhibit No. 17, again, as you have testified, this is Wolf?

A Right.

MR. KREMER: Thank you, ma'am.

REDIRECT EXAMINATION BY MR. HOULIHAN:

Q You don't specifically remember being shown another photograph, is that right? I mean do you remember exactly the photographs that were shown to you?

A Yes, sir.

Q And without a doubt, you are saying that is not one of the photographs shown to you, referring to Government's Exhibit 16?

A Yes, sir.

Q And is it possible that you might be mistaken?

A No, sir.

MR. HOULIHAN: Would you mark these for identification?

(Thereupon, photographs referred to were marked Government's Exhibits 18 through 22 for identification.)

BY MR. HOULIHAN:

Q I call your attention to Government's Exhibit 18 marked for identification, was that the photo that you were shown on that day?

A No, sir.

Q I show you Government's Exhibit 19 marked for identification, was that the photo that you were shown on that day?

A No, sir.

Q I show you Government's Exhibit 20 marked for identification, was that the photo that you were shown on that day?

A No, sir.

Q I show you Government's Exhibit 21, is that the photo you were shown on that day?

A No, sir.

Q I show you Government's Exhibit 22 marked for identification, were you shown that photo on that day?

A No, sir.

Q No?

A No, sir.

MR. HOULIHAN: That is all I have. Thank you.

MR. KREMER: Thank you.

(Witness excused.)

P E T E R J A C O B S O N , Room 3, 100 State Street,

Excerpts from Trial Transcript (Vol. I).
Peter Jacobson for Government, Direct.

63

Rochester, New York, called as a witness on behalf of the Government, and being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOULIHAN:

Q Mr. Jacobson, by whom are you employed?

A The Federal Bureau of Investigation.

Q How long have you been with the FBI?

A About seven years.

Q Now, did there come a time that you were assigned an investigation of the bank robbery which occurred on June 20, 1975?

A Yes, the same day of the bank robbery.

MR. KREMER: Objection, not responsive.

MR. HOULIHAN: Your Honor, I think that objection as not being responsive is reserved to me. Of course, I am perfectly happy with that response.

THE COURT: It was responsive, go ahead. I don't think it is reserved to you but --

BY MR. HOULIHAN:

Q During the course of that entire investigation, did you have occasion to interview David Bryant?

A Yes, sir, I did.

Q And I show you Defendant's Exhibit 1 marked for identification, which appears to be a copy of a 302 form, was that prepared by you?

A Yes.

Excerpts from Trial Transcript (Vol. I).
Peter Jacobson for Government, Direct.

64

Q And during the course of that conversation did Mr. Bryant say that he did not wish to answer any further questions?

A Yes.

Q And what did you do after that?

A We stopped asking him questions.

Q Thank you. I call your attention to Government's Exhibit 10 marked for identification, have you seen that photograph before?

A Yes, I have.

Q And --

THE COURT: Excuse me, what exhibit?

MR. HOULIHAN: Government's Exhibit 10, your Honor.

BY MR. HOULIHAN:

Q During the course of your investigation did you show that photograph to any individual?

A Yes.

Q Now, relating to three individuals; Doug Quinn, Stella Bynoe and Gwendolyn Walters, did you show that photograph to any of those three individuals?

A Yes, I did.

Q Which of those three?

A I showed this photograph to Stella Bynoe and to Gwendolyn Walters.

Q At the time that you showed that photograph to Stella Bynoe, did you tell her who was in the photograph?

A No, I did not.

MR. KREMER: Objection, leading.

THE COURT: Yes, you are leading.

BY MR. HOULIHAN:

Q What, if anything, did you tell her?

A I showed her the photograph and asked her if she was familiar with the individual depicted in the photograph.

Q And what, if anything, did she say?

A She told me yes, she was familiar with the person in the photo, in fact, it was her brother, Sonny Alexander.

Q You also showed this particular photo to Gwendolyn Walters, what, if anything, did you say to her when you showed her that photograph?

A I handed her the photograph and asked her if she recognized the individual in the photograph, and she said yes, it was her brother Harold Sonny Alexander.

Q I show you Government's Exhibit 16 marked for identification, did you show that photograph to any individual?

A Yes, I did.

Q Who did you show it to?

A Stella Bynoe.

Q How do you know that you showed that to Stella Bynoe?

A I made a notation on the back with her name, the date and my initials.

Q What date was that?

- A August 26, 1975.
- Q And at the time that you showed that photograph to her what, if anything, did you tell her?
- A I asked her if she recognized the individual in the photo, and she indicated she did.
- Q And what, if anything, did she tell you?
- A She told me she knew this individual as David Bryant, and he was a friend of her brother's, Sonny.
- Q I show you Government's Exhibit 17 marked for identification, do you recognize that photograph?
- A Yes.
- Q Did you show it to any of those three individuals that you have previously mentioned?
- A Yes, I did. I showed this photograph to Stella Bynoe.
- Q On what date?
- A On August 26, 1975.
- Q What, if anything, did you ask her relative to that photograph?
- A I asked if she recognized the individual in the photograph and she indicated to me she did.
- Q And who did she say it was?
- A She said she knew this individual only as Wolf and that he was a friend of her brother's, Sonny.
- Q Showing you Government's Exhibit 8 marked for identification, did you show that photograph to any one of the

Excerpts from Trial Transcript (Vol. I).
Peter Jacobson for Government, Direct.

67

three individuals that I mentioned to you?

A. Yes, I did. I showed this photograph to Gwendolyn Walters.

Q. And what, if anything, did you say to her when you showed her the photograph?

A. I asked her if she recognized the individual in that photograph.

Q. What, if anything, did she say?

A. She said yes, she recognized this as someone she knew as Randy, a friend of Sonny Alexander's, named Randy Johnson.

Q. I show you Government's Exhibit 9 marked for identification, did you show that photograph to anyone?

A. Yes, I did. I showed this photograph to Gwendolyn Walters.

Q. And what, if anything, did you say when you showed her that photograph?

A. I asked if she recognized the individual in that photograph and she indicated to me she did not.

Q. I show you Government's Exhibit 7 marked for identification, did you show that photograph to anyone?

A. I showed this photograph to Gwendolyn Walters.

Q. And what, if anything, did you ask her to do in regard to that photograph?

A. I asked if she recognized the individual in the photo-

Excerpts from Trial Transcript (Vol. I).
Peter Jacobson for Government, Direct.

68

graph, and she indicated to me she recognized the photo as Randy, a friend of her brother's, Sonny.

THE COURT: What number is that?

THE WITNESS: No. 7, sir.

BY MR. HOULIHAN:

Q When you showed these photographs to these individuals, did you have more than the photographs that I have shown to you; Government's Exhibits 10, 16, 17, 8, 9 and 7?

A I had more photographs on my desk, but the only ones I actually showed the individuals were the ones that I initialed and we have discussed.

MR. HOULIHAN: That is all I have for Mr. Jacobson.

CROSS-EXAMINATION BY MR. KREMER:

Q With reference to Exhibit 1, Agent Jacobson, after you had elicited from Mr. Bryant that he wanted to speak to an attorney, you said that you terminated the interview?

A Did you or your colleague, preparing that report, take Mr. Bryant to the United States Magistrate immediately thereafter?

A No, sir.

Q Did there come a time when you took him to the United States Magistrate?

A No, sir.

Q To this day do you know when, if ever, Mr. Bryant was taken to the United States Magistrate?

* * * * *

Excerpts from Trial Transcript (Vol. II).
Douglas M. Quinn for Government, Direct.

53

photographs, there you may have something.

MR. HOULIHAN: Only the general photographs that have been identified.

THE COURT: Go ahead, forget her then.

MR. HOULIHAN: Okay. The Government calls Douglas Quinn.

D O U G L A S M . Q U I N N , 119 Kenwood Avenue,
Rochester, New York, called as a witness on behalf of the
Government, and being first duly sworn, testified as follows:
DIRECT EXAMINATION BY MR. HOULIHAN:

Q Mr. Quinn, by whom are you employed?

A Self.

Q Pardon?

A Myself, I am head of the youth organization.

Q What is the name of the organization?

A Rochester Federation of Youth.

Q How long have you been the head of that youth organization?

A About a year.

Q About a year?

A Yes.

Q Prior to the time that you became head, were you associated with that youth organization?

A Yes, I was.

Q And how long prior to that?

Excerpts from Trial Transcript (Vol. II).
Douglas M. Quinn for Government, Direct.

59

A Two or three years.

Q And during the course of your association with the Rochester Federation of Youth, did you have occasion to know David Bryant?

A Yes.

Q How long have you known him?

A About two and a half years.

Q And how is that you first came to meet David Bryant?

A He had just come to town. Through the organization, I met him through another individual.

Q And this was you say another organization, what type of organization?

A Through the same organization.

Q The Rochester Federation of Youth?

A Yes.

Q And do you know where David Bryant lived?

A When he was in Rochester?

Q Yes.

A A number of places.

Q Did he ever live at 118 Aberdeen Street?

A Yes.

Q How long did he live there?

A About a year, I guess.

Q And in relationship to the date of June 20, 1975, this would be a year prior to that date, is that what you

Excerpts from Trial Transcript (Vol. II).
Douglas M. Quinn for Government, Direct.

60

mean?

A Yes, about like that, right.

Q Now, where did you reside prior to June 20, 1975?

A 117 Rauber.

Q Did you ever live with David Bryant?

A Yes, I did.

Q How long did you live with him?

A About a year.

Q And where was this?

A It was at 491 Jefferson Avenue.

Q This was prior to the time that Mr. Bryant had moved to 118 Aberdeen Street?

A Right.

Q Now, I call your attention to the date of June 20, 1975, were you questioned by the FBI on that day?

A Yes, I was.

Q And you were shown some photographs?

A Yes.

Q I call your attention to Government's Exhibit 3 marked for identification, were you shown that photograph?

A Yes.

Q I show you Government's Exhibit 4 marked for identification, were you shown that photograph?

A Yes.

Q I show you Government's Exhibit 6 marked for identification, were you shown that photograph?

A Yes.

Q At the time that you were shown these photographs were you asked if you knew anyone in those photographs?

A They asked, yes, right.

Q And you were asked this on several occasions, were you not?

A Yes, I was.

Q Okay. On the date of June 20 did you identify individuals that were depicted in that photograph?

A I said who it looked like to me.

Q Okay. With regard to Government's Exhibit 3 marked for identification, who did you say that was?

A It looked like Elisha Abrams.

Q How long had you known Elisha Abrams prior to June 20, 1975?

A About a year.

Q Was he also associated with the Rochester Federation of Youth?

A Yes, he was.

Q Showing you Government's Exhibit 4 marked for identification, were you shown that photograph?

A Yes.

Q And did you identify who is depicted in that photograph?

Excerpts from Trial Transcript (Vol. II).
Douglas M. Quinn for Government, Direct.

62

- A. The same person.
- Q. Elisha Abrams?
- A. Right.
- Q. Referring to Government's Exhibit 6 marked for identification, were you shown that photograph?
- A. Yes, I was.
- Q. And who did you identify in that photograph?
- A. A number of people but I said David Bryant. I mentioned a number of names, but David Bryant was the one.
- Q. David Bryant was the one you said?
- A. Yes.
- Q. Sometime after June 20, 1975 you again had a conversation with FBI agents?
- A. Yes.
- Q. They again showed you these particular photographs?
- A. Yes.
- Q. And I am showing you Government's Exhibit 3 marked for identification, did you again identify the individual on that photograph?
- A. Yes, Elisha Abrams.
- Q. Then you initialed the reverse side of that photograph?
- A. Yes.
- Q. That DQ that appears on the back of Government's Exhibit 3 is your initials?
- A. Yes. When I first saw the pictures I think I initialed

them. I might be wrong, it was a long time ago.

Q And referring to Government's Exhibit 4 marked for identification?

A The same man.

Q That is Elisha Abrams again?

A Yes.

Q You initialed the reverse side of that DQ, those are your initials?

A Yes.

Q Referring to Government's Exhibit 6 marked for identification, you identified that as David Bryant and you initialed the reverse side of that, is that right?

A Yes.

Q The DQ is your initials?

A Right.

Q At the same time that you were shown these photographs and initialed the reverse side of them, you were asked to sign a statement, were you not?

A A number of times I was.

Q Referring to the date of June 24, 1975, and calling your attention to Government's Exhibit 22, do you recall signing that statement?

MR. KREMER: Your Honor, I object at this time, the witness can speak for himself.

THE COURT: Yes, sustained.

BY MR. HOULIHAN:

Q Mr. Quinn, in the statement given June 24, 1975, the statement, you were shown -- excuse me just a moment -- I show you Government's Exhibit 25 marked for identification which appears to be a photograph, were you shown that photograph?

A Yes, I was.

Q That has your initials on the reverse side of it?

A That is right.

Q And who did you identify in that photograph?

A Harold Alexander.

Q At the time of June 24, 1975, did you positively identify the individuals Harold Alexander, David Bryant and Elisha Abrams?

MR. KREMER: Objection.

THE COURT: That is leading. Ask another question.

BY MR. HOULIHAN:

Q With regard to those individuals, did you identify them?

A Yes, I said who they looked like to me.

Q You identified them, is that right?

A I told them the names I thought they were.

THE COURT: Don't argue with the witness. You are trying to lead him into some positiveness that the witness is not generating himself, Mr. Houlihan.

BY MR. HOULIHAN:

Excerpts from Trial Transcript (Vol. II).
Douglas M. Quinn for Government, Direct.

65

Q I show you Government's Exhibit 22 marked for identification, and ask you to read that to yourself to refresh your recollection.

A (Witness examines document.) Yes.

Q And I ask you at the time that you made the identification of the individuals depicted in that photograph, did you or did you not say that was a positive identification?

A I never -- I said that is who it looked like.

Q Calling your attention to Government's Exhibit 22 marked for identification, is that your signature that appears on there?

A Yes, it is.

Q And that was signed by you in the presence of two FBI agents, is that right?

A Yes, it was.

Q And you read this statement prior to the time you signed it?

A Yes.

MR. HOULIHAN: Your Honor, I offer Government's Exhibit 22.

MR. KREMER: Your Honor, it is being offered first to impeach the witness, and on that ground I would object.

THE COURT: Of course, that is permitted in Federal Court.

MR. KREMER: I would also object on the grounds that the

Excerpts from Trial Transcript (Vol. II).
Douglas M. Quinn for Government, Preliminary.

66

witness is the best judge of what he said or what he hasn't said. This particular statement is not adequate for this particular purpose.

THE COURT: Do you want some initial interrogation?

MR. KREMER: Yes, your Honor.

THE WITNESS: Excuse me. Your Honor, the problem --

THE COURT: No, no, wait for a question.

PRELIMINARY EXAMINATION BY MR. KREMER:

Q Mr. Quinn, is this your signature?

A Yes, it is.

Q And is this your writing, the body of it, or somebody
elses?

A Somebody elses.

Q You didn't write this yourself?

A No, sir.

Q This is your signature, the writing is somebody elses?

A Yes.

Q Was it one of the FBI agents who wrote this out for you?

A Yes.

MR. KREMER: All right. Your Honor, at this time I would --
without going further I would --

THE COURT: That doesn't carry the day, Mr. Kremer.

MR. KREMER: May I do this, may I defer this until my cross-
examination, and then at that point at the

Excerpts from Trial Transcript (Vol. II).
Douglas M. Quinn for Government, Direct.

67

conclusion of the cross-examination the Court can rule upon the objection with respect to this statement?

THE COURT: No, I think it is a proper subject for cross-examination, and I will admit Government's Exhibit 22 in evidence and, of course, with your cross-examination the jury will have the full picture, what Mr. Quinn has testified to on the stand and what is in Government's Exhibit 22, and whose words it is, and so on, and so forth. The jury can have the total import of that.

MR. KREMER: My exception, your Honor.

THE COURT: Yes. Government's Exhibit 22 is received in evidence.

(Thereupon, Government's Exhibit 22, pre-marked for identification, was received and marked in evidence.)

BY MR. HOULIHAN:

Q Mr. Quinn, do you see the individual that you know as David Bryant in the courtroom today?

A Yes, I do.

Q Would you please describe what he is wearing, where he

is seated?

A He is seated at the defense table over there in the orange pullover and green slacks.

MR. HOULIHAN: For the record, identifying the defendant, David Bryant. No further questions at this time.

CROSS-EXAMINATION BY MR. KREMER:

Q Mr. Quinn, sir, you were arrested by the Rochester Police on June 20, is that not correct?

A Not arrested, I was picked up.

Q You were picked up, they put you in a police car?

A Yes, they did.

Q And they told you they were taking you to the Public Safety Building?

A Right.

Q And they told you they were going to question you about a bank robbery?

A Correct.

Q About what time of day was that?

A This was shortly after eleven.

Q Eleven o'clock?

A Somewhere between eleven, 11:30.

Q In the evening?

A In the afternoon.

- Q In the afternoon?
- A In the morning I should say.
- Q In the morning. And how long did they keep you in the Public Safety Building?
- A Ten hours.
- Q So that it is your testimony then that you did not get out of the Public Safety Building until when?
- A Approximately 9:00 or 9:30.
- Q That evening?
- A Yes.
- Q Now, at that particular time you were being examined and questioned by Rochester City Detectives, is that not correct?
- A Yes.
- Q And there were quite a few detectives?
- A Yes, indeed.
- Q And they were accusing you of this bank robbery, correct?
- A Right.
- Q They said you were the person that did it?
- A They -- I don't remember if they exactly said I was the one. They did question me and said they think I was involved in it, right.
- Q And they questioned you continuously for a long period of time?
- A Right.

- Q And then there came a time when they showed you some photographs, correct?
- A Right.
- Q And those were the photographs which Mr. Houlihan has told you about, is that not correct?
- A Yes, they are.
- Q And is it a fair statement that -- or do you know approximately what time of evening or when during the course of this initial questioning by the police you were shown those photographs?
- A About 5:30, six o'clock, somewhere around in there.
- Q And what had you had to eat from the time you were picked up until the time you finally left the police station?
- A I think I had a candy bar in my pocket or something that I ate.
- Q Was the questioning continuous?
- A Off and on, yes, indeed.
- Q Now, with respect to the photographs, is it not a fact that the detective said in substance, 'This is Abrams, is it not,' is that the way they handled it?
- A No.
- Q They asked you to look at these pictures?
- A Yes.
- Q Now, you indicated they were getting ready, as far as you were concerned, to accuse you of this bank robbery,

is that not correct?

A Yes, they -- at one point I was told that I was lying.

Q So that they wanted you to identify these particular individuals, is that not correct?

A Yes.

Q Didn't the police say doesn't this picture look like you?

A In reference to what?

Q No. 1 -- or No. 4.

THE COURT: What are you showing him?

MR. KREMER: No. 4.

BY MR. KREMER:

Q Did they say that looked like you?

A Not to my recollection. You are referring to this individual here?

Q Yes.

A No. No, not to my recollection.

Q Now, when you got out of the police station, there came a time when you were again questioned by another police department, is that correct, by another police agency?

A Plus I was questioned by another agency the same day.

Q Now, while you were in the police station, of course, you were questioned by the police, but after you left the police station, there came another time when you were questioned by another police officer?

A Yes.

Excerpts from Trial Transcript (Vol. II).
Douglas M. Quinn for Government, Cross.

72

Q That was a member of the FBI, is that not correct?

A Right.

Q How many different times were you interviewed by the FBI?

A I don't remember. It was a number of times because even after these people were apprehended I was under constant harassment.

Q Now, Mr. Quinn, with respect to Exhibit No. 22, it is dated June 24, 1975, is that not correct?

A Yes.

Q Do you remember the time of day that you made that particular statement?

A No.

Q Do you remember where you made that particular statement?

A No, I don't remember. I don't remember this particular statement period. It was so many times, like I say, I was questioned. The only one I can really remember clearly is the actual day.

Q In here appears the writing that you had viewed photographs at the Lincoln First Bank, and in the statement that you positively identified them as David Bryant, Sonny Alexander and Wolf Abrams, and that is what it says there. Did you positively identify these three individuals?

A No, I said that is who it looks like. Now, that is

what -- I have had trouble with this, going to the grand jury for the State and everything --

Q I am going to turn your attention to a subsequent event occurring on June 25, 1975, specifically an appearance that you made in a preliminary hearing in the Monroe County -- or in the City Court of Rochester on that same date, do you recall that appearance?

A Was that the grand jury hearing?

Q Do you remember going to the Public Safety Building on June 25 to give testimony?

A I don't remember the date. I remember going to the Public Safety Building a number of times.

Q Do you remember giving testimony in an appearance, do you remember giving testimony and being cross-examined on that?

A Yes, I do.

Q And did that occur on June 25, 1975?

A The day, I don't know. I remember it was shortly thereafter though.

Q And you were asked a bunch of questions by a Monroe County District Attorney, weren't you?

A Yes, I was.

Q You were also asked some questions by a public defender representing Mr. Bryant, weren't you?

A Yes, I was.

Excerpts from Trial Transcript (Vol. II).
Douglas M. Quinn for Government, Cross.

74

Q Now, I am going to turn your attention to some questions and answers that were asked on that particular day, and I am going to ask you if your recollection is refreshed by these particular questions.

THE COURT: Do you want to have him read it to himself?

MR. KREMER: Yes, your Honor.

BY MR. KREMER:

Q Read down to here.

A Up to here.

Q Yes.

A (Witness examines transcript.)

Q Now you've read this over?

A Yes.

Q And that in substance was your testimony, that was part of your testimony at the preliminary hearing, is that correct?

A Yes.

Q And in there do you remember the following question and the following answer --

THE COURT: You started out along the line of questioning whether this refreshed his recollection, are you dropping that?

BY MR. KREMER:

Q Does this refresh your recollection as to the testimony that you gave at that proceeding?

A Yes.

MR. KREMER: Now, specifically, your Honor, I would like to read some extracts from it.

MR. HOULIHAN: I object to that. If he testifies to anything, that is fine, but if he uses it to impeach him, then --

THE COURT: Yes. If you want to see if it refreshes his recollection then, of course, you question him to see what his refreshed recollection is. If you want to impeach him, of course, you can ask him whether he was asked this question and did he give this answer.

BY MR. KREMER:

Q All right. You were asked, were you not, if the photograph looked like somebody else, weren't you?

A Yes.

Q What did you say?

A I said, "Yes, it could pass for somebody else."

Q Who else did you say it could have passed for?

A I said it could have passed for me, my brother, and a number of other people.

Q So that you did tell the police that you thought that it did pass for you, is that correct?

A Yes.

Q And you said that it did -- you thought it could pass

Excerpts from Trial Transcript (Vol. II).
Douglas M. Quinn for Government, Redirect.

76

for your brother, is that correct?

A Yes, that is correct.

Q Now, when you gave this statement to the FBI, do you remember what the conditions were under which you gave it to them, this written statement?

THE COURT: He said he doesn't remember when he gave it.

THE WITNESS: No, I don't.

BY MR. KREMER:

Q Are you prepared to say then today that you positively identified David Bryant?

A Today, tomorrow, never, no, I'm not.

MR. KREMER: Thank you, sir.

REDIRECT EXAMINATION BY MR. HOULIHAN:

Q You don't deny, do you, Mr. Quinn, that you read this statement and signed it after you read it?

A No, I don't.

Q This is Government's Exhibit 22?

A Yes.

Q And the testimony that you gave at a preliminary hearing was sometime after this statement that you gave to the FBI, was it not?

A Yes.

Q It is a fact, is it not, that you have known David Bryant a long time?

A. Yes, it is.

Q. You like him, don't you?

A. I certainly do.

MR. HOULIHAN: Thank you. I have no further questions.

MR. KREMER: Thank you, sir.

(Witness excused.)

THE COURT: Is your next witness the same type as far as length?

MR. HOULIHAN: I think so, your Honor. I don't know if they are here yet.

THE COURT: All right. Normally, I would be recessing at twelve o'clock. We will jump the gun just a little bit and we will recess at this time, and come back at one o'clock. Now, you are just in the process of listening to the evidence, there is more to come, so keep your minds open on all the issues that you are ultimately going to have to decide, and do not talk about it among yourselves yet and, most importantly, don't talk with anybody else. If anyone tries to talk with you, let me know. If you have some present familiarity with the East End Branch of the Lincoln First

Excerpts from Trial Transcript (Vol. II).
Douglas M. Quinn for Government, Redirect.

78

Bank, fine, but don't go there now to see
what it looks like or tonight. You may leave
at this time.

(Thereupon, the court was in recess at
11:57 A.M.)

* * * * *

Excerpts from Trial Transcript (Vol. II).
Stella Alice Bynoe for Government, Direct.

101

MR. HOULIHAN: In lieu of Mr. DiChario, I call Stella Bynoe.

S T E L L A A L I C E B Y N O E , 381 Frost
Avenue, Rochester, New York, called as a witness on behalf
of the Government, and being first duly sworn, testified as
follows:

DIRECT EXAMINATION BY MR. HOULIHAN:

Q Miss Bynoe, are you employed?

A No, I go to school.

Q And how long have you lived in Rochester?

A Thirty-four years.

Q I call your attention to the date of August 26, 1975,
were you interviewed by an FBI agent on that day?

A Yes, sir.

Q And at that time you were shown some photographs, were
you not?

A Yes, sir.

Q And you identified some individuals in those photographs,
is that right?

A Yes, sir.

Q Now, one of the individuals that you identified was whom?

MR. KREMER: Objection. The question has got to call for
a yes or no answer the way it is phrased.

MR. HOULIHAN: Your Honor --

THE COURT: No, no, it was who or whom.

Excerpts from Trial Transcript (Vol. II).
Stella Alice Bynoe for Government, Direct.

102

MR. KREMER: I will withdraw the objection. Excuse me,
your Honor.

BY MR. HOULIHAN:

Q You identified several individuals, did you not?

A Yes, sir.

Q And who was the first individual you identified?

A My brother.

Q Who is your brother?

A Sonny.

Q And his last name?

A Alexander.

Q I show you Government's Exhibit 1 marked for identification, were you shown a photograph like this?

A Yes, sir.

Q And do you recognize the individual depicted in that photograph?

A Yes, sir.

Q Who is that?

A My brother.

Q Sonny Alexander?

A Yes.

Q At the same time the FBI agent showed you a photograph similar to Government's Exhibit 3 marked for identification, showing an individual, did you identify that individual?

MR. KREMER: I object, your Honor. May I approach the bench, sir?

THE COURT: Yes.

(Thereupon, the following conference ensued at the bench:

MR. KREMER: My recollection of the testimony was that she was shown 16, 17, 18 and 19 or 15, 16, 17, 18 and 19. I have no recollection that she was shown Exhibits 1, 2, 3 and 4. This was when she was testifying at the Wade hearing. So I am going to object, these are different pictures, different views, and if my adversary wishes to go through the Government's exhibits that he introduced the last time, I can't object to that, but I can object to these.

MR. HOULIHAN: Your Honor, the testimony at the hearing was that she was shown a photograph similar to -- she was shown photographs where she put her name on the reverse side and initialed them --

THE COURT: She said she was shown 17, did not see 16, did not see 18, 19, 20, 21 and 22. She gave some description in spite of that about 16, and she said something about 10. I'm not

Excerpts from Trial Transcript (Vol. II).
Stella Alice Bynoe for Government, Direct.

104

sure whether she said she had seen 10. There was no mention of 1 and 2.

MR. HOULIHAN: These are different exhibit numbers. I was advised those exhibit numbers would not be consistent with these, and I chose the eleven photographs and put exhibit numbers on them.

THE COURT: Which is what?

MR. HOULIHAN: That is a good question, I covered the thing up. Let's see -- may I just qualify her on each of these?

MR. KREMER: Again, it is the problem we had the --

THE COURT: The problem is that if you are going to be dealing with the same photographs -- you have seen the photographs, you know --

MR. KREMER: I do. She distinctly testified that -- my recollection of her testimony was that she was seeing the defendant's picture for the first time.

THE COURT: This is one thing that bothers me. I don't know why we go through this circuitous path. The essence of it is not what she said to the FBI, which she identified in the past, it is what she now identifies. If she falls short of some present identification of the defendant, you can get back and do her identifi-

Excerpts from Trial Transcript (Vol. II).
Stella Alice Bynoe for Government, Direct.

105

cation, then it is pertinent what she said she was shown. I will have to rely upon your double checking as to whether we are talking about the same photographs.

MR. HOULIHAN: I will proceed to qualify her on the basis of these particular photos presently.

THE COURT: Don't deal with any photographs that you did not deal with on the suppression hearing.

MR. HOULIHAN: They were the same photos, just numbered differently.

THE COURT: Show Mr. Kremer the ones that you intend to use, and see whether he agrees that these are the ones.

MR. KREMER: Your Honor, my next objection, having gotten past this, is that some of these photographs have got names on the back of them, some of them have Miss Bynoe's name on the back of them and --

THE COURT: We will only be dealing with them frontally, she won't look at the back of them. It is only if she gives some answer that Mr. Houlihan feels needs some impeachment by the way of further identification, which would tie in with something on the back, then he can use that. You, Mr. Houlihan, were starting to

Excerpts from Trial Transcript (Vol. II).
Stella Alice Bynoe for Government, Direct.

106

tell me which is which, you could not do it without looking at what the number was. I saddled Mr. Kremer with that same problem of looking at the photo and saying this was Exhibit X on the suppression hearing. Now, if you are unable to do it, how is he able to do it?

MR. HOULIHAN: Your Honor, there are marks on the reverse side that are consistent with the testimony of Peter Jacobson at the time of the suppression hearing and also the mark of David Quinn that he testified to at the suppression hearing. I will be able to reconstruct those.

THE COURT: She testified about -- she, without having seen it before, stated clearly she had not seen it before, she made an identification from 16, what exhibit is that?

MR. HOULIHAN: That is Government's Exhibit -- I believe Government's Exhibit 5. She said she didn't --

THE COURT: She identified 10 as being her brother, is that 1?

MR. KREMER: 1 has been consistently 1.

MR. HOULIHAN: Yes, 1 is the one that we are talking about.

THE COURT: She testified about 1 on the suppression hearing, she testified about 10 and 17 and 16,

those three.

MR. HOULIHAN: I am going to be able to raise these numbers.
I am going to have to destroy the top number.
We have -- there is no question about Harold
Alexander.

THE COURT: Jacobson said he showed her 10, it was her
brother.

MR. HOULIHAN: Right, that is this one.

THE COURT: Mr. Kremer says that 1 was 1.

MR. KREMER: I might be mistaken on that, your Honor. I'm
not -- I can't say for sure at this point
which was which.

THE COURT: Jacobson said he showed her 17, she said it
was Wolf.

MR. KREMER: I will be right back, your Honor.

THE COURT: Jacobson said he showed her 16, she said she
didn't see 16.

MR. KREMER: Right.

MR. HOULIHAN: Government's Exhibit 1 is 10.

MR. KREMER: Okay. Call it No. 10.

MR. HOULIHAN: Well, I don't care, but we have been identify-
ing it as 1.

THE COURT: You can put on the record the correlation of
what was 1 is now 10. What was 16?

MR. HOULIHAN: I thought I was avoiding objections by cover-

Excerpts from Trial Transcript (Vol. II).
Stella Alice Bynoe for Government, Direct.

108

ing these things over. This is 17.

MR. KREMER: Okay.

MR. HOULIHAN: I don't remember the other number on it.

MR. KREMER: Might as well call it 17, it is old 17.

THE COURT: What is the new -- what was it on trial?
Which one did you scratch off?

MR. HOULIHAN: I'm just trying to figure it out. Okay, that
was 5. The present 5 was 17, that is right.

THE COURT: Okay.

MR. HOULIHAN: It wasn't 5 -- wait a minute -- okay, former
17 is now 2 in this trial, by process of elim-
ination.

THE COURT: All right, which one was 16?

MR. HOULIHAN: That should be No. 5.

THE COURT: Is this 5 that you are obliterating?

MR. HOULIHAN: This is 5 that I am obliterating, yes.

THE COURT: All right. There was three that we dealt with
on the suppression hearing.

MR. KREMER: Yes, your Honor.

THE COURT: All right.

(Thereupon, the conference at the bench
was terminated.)

THE COURT: What we have been doing, ladies and gentle-

Excerpts from Trial Transcript (Vol. II).
Stella Alice Bynoe for Government, Direct.

109

men, is trying to correlate present exhibit numbers with some exhibit numbers that had been used earlier. We have now done that.

BY MR. HOULIHAN:

Q Miss Bynoe, I show you Government's Exhibit 2 marked for identification, do you recognize the individual in that photograph?

A Yes.

Q Who is that?

A Wolf.

Q And does Wolf have any other name?

A Not to my knowledge, that is all I know him as.

Q As Wolf?

A That's it.

Q Okay. I show you Government's Exhibit 5 marked for identification, can you identify the individual in that photograph?

A Yes.

Q Who is that?

A Randy Johnson.

Q The individual that you know as Randy Johnson, do you know him by any other name?

A Well, I later learned that he had another name.

Q What is his other name?

Excerpts from Trial Transcript (Vol. II).
Stella Alice Bynoe for Government, Cross.

110

A David Bryant.

Q Do you see the person that you know as Randy Johnson in the courtroom today?

A Yes.

Q Could you please point him out to the members of the jury?

A Sitting over at the table.

Q What color shirt does he have on?

A An orange one.

MR. HOULIHAN: For the record, indicating the defendant, David Bryant.

BY MR. HOULIHAN:

Q Miss Bynoe, how long have you known Randy Johnson?

A I don't exactly. It hasn't been that long.

Q Approximately?

A About two or three years.

MR. HOULIHAN: Thank you. No further questions.

CROSS-EXAMINATION BY MR. KREMER:

Q Miss Bynoe, you say that you have known the man that you identified as Randy Johnson for some two or three years, is that correct?

A Yes.

Q And there came a time on August 26, 1975, when an FBI man came to talk to you and showed you some pictures,

Excerpts from Trial Transcript (Vol. II).
Stella Alice Bynoe for Government, Cross.

111

is that not correct?

A Mr. Jacobson came to see me, I wasn't home at the time.

MR. KREMER: Would you read the question back, please?

THE COURT: Listen to the question and answer it.

(Thereupon, the last question was read
by reporter.)

THE WITNESS: No, sir.

BY MR. KREMER:

Q Did there come a time in August of 1975 when you talked
with an FBI agent?

A Yes, sir.

Q All right. And that was here in the Federal Building,
is that not correct?

A Yes.

Q He asked you to come see him?

A No, sir.

Q You told him that you wanted to come and see him?

A Yes, sir.

Q And you told him that you were Sonny Alexander's sister?

A No, sir.

Q Had someone contacted you prior to your contacting Mr.
Jacobson, asking you to come downtown?

A Yes, sir.

Q Who was that person?

A Mr. Jacobson.

Q All right. When was the first time you saw him, if you recollect?

A I don't recollect the exact date.

Q And would it have been a few days after the 26th?

A I don't know when the 26th was.

Q All right. How many times in August did you see Mr. Jacobson?

A Once.

Q Well now, you told me -- in other words, you saw him once and he phoned you once?

A No, sir.

Q Well, didn't you just testify a few seconds ago that you saw him a few days before the 26th or sometime before the 26th?

A No, sir.

Q All right. There came a time when you came downtown to see Agent Jacobson, correct?

A Right.

Q And you told me that you had called him and told him you would come downtown?

A Yes, sir.

Q And you told me that you received a telephone call from him -- you didn't tell me that?

A No, sir.

Q He had come to see you prior to your coming down to the Federal Building?

A Yes, sir.

Q And was this at your house that he came to see you?

A Yes, sir.

Q And where were you living then?

A 381 Frost Avenue.

Q Can you tell us how many days prior to your coming down here that he came to see you?

A The following day I came downtown.

Q He came to see you on one day and the next day you came down to see him, is that correct?

A Yes.

Q Now, how much time did he spend with you at your house on Frost Avenue, if you recollect?

THE COURT: Go ahead, you can answer the question.

THE WITNESS: No, sir, I can't answer the question.

THE COURT: You can say he didn't see you.

THE WITNESS: He didn't see me at my house.

THE COURT: You tell me if I'm wrong, he came to see you at your house, you were not there?

THE WITNESS: Yes.

THE COURT: Pursuant to that you called him and you came down to see him the following day?

THE WITNESS: Yes, sir.

MR. KREMER: Thank you, your Honor.

BY MR. KREMER:

Q Now, can you tell us what time you got to Mr. Jacobson's office?

A No. It was in the morning time I think.

Q All right. And did you go into an office with him or did you stay in the big reception area with him?

A No, I went into his office.

Q Was there anybody else there with him?

A No, sir.

Q And how much time did you spend with him?

A About fifteen minutes.

Q And he told you, did he not, or you knew, did you not, that prior to this that your brother had been involved in a bank robbery?

A Yes, sir.

Q And you knew that he wanted to talk with you about this bank robbery, did you not?

A Yes, sir.

Q And as a matter of fact, that is what you and he discussed, the bank robbery?

A Yes, sir.

Q And he told you that he had some photographs that he wanted to show you, did he not?

A Yes, sir.

Q And he proceeded to show you some photographs, did he not?

A Yes, sir.

Q Now, this particular exhibit that you identified today as being the man who you say was Randy Johnson, you were not shown that picture by Mr. Jacobson?

THE COURT: You have handed the witness a photograph, what exhibit is that?

MR. KREMER: Excuse me, your Honor, it is exhibit --

THE COURT: The present exhibit?

MR. KREMER: 5.

THE COURT: All right. Do you want the question read?

THE WITNESS: Yes.

(Thereupon, the last question was read
by reporter.)

THE WITNESS: No, sir, I wasn't.

BY MR. KREMER:

Q And the first time that you have seen this particular picture has been during the last part of October or the first part of November, is that not correct, this year?

A November 1st.

Q Now, do you recollect how many pictures that you were

shown on August 26?

A. No, sir.

Q. You were shown pictures of your brother, is that not correct?

A. Yes, sir.

Q. You were shown pictures of this man named Wolf, is that not correct?

A. Yes.

Q. And were you shown any photographs of any other person on that day?

A. No, sir.

(Thereupon, documents were marked Defendant's Exhibits 4, 5 and 6 for identification.)

BY MR. KREMER:

Q. Now, I'm going to show you a paper which is labeled Exhibit 5, and I'm going to ask you --

THE COURT: Wait a minute, Exhibit 5?

MR. KREMER: Defendant's Exhibit 5, your Honor.

THE COURT: All right.

BY MR. KREMER:

Q. I ask you to look that over.

A. (Witness examines document.)

Q. Now, you have just told me that you were shown -- on this

particular day you were shown pictures of Wolf, correct?

A Right.

Q And you were shown pictures of your brother?

A Correct.

Q And you were shown no other pictures of any other person, correct?

A No, sir.

Q No, I am incorrect, or no, you were shown no more persons' pictures?

A You are incorrect.

Q All right. Showing you Exhibit 2 for identification, your identification, you identified this man as Wolf, is that correct?

A Yes, sir.

Q And he is carrying a handgun, is he not?

A Yes, sir.

Q He is also carrying a light bag in his hand, is that not correct?

A Yes, sir.

MR. KREMER: Thank you, Miss Bynoe.

REDIRECT EXAMINATION BY MR. HOULIHAN:

Q Miss Bynoe, I just have one more question. I show you Government's Exhibit 5, this is not the photograph you just testified about with Mr. Kremer, this is not the

Excerpts from Trial Transcript (Vol. II)
Stella Alice Bynoe for Government, Recross.

118

photograph that you were shown by the FBI agent?

A No.

Q Was the individual pictured in the photograph the same individual --

MR. KREMER: Objection.

THE COURT: Same individual as what?

BY MR. HOULIHAN:

Q Shown in this Exhibit 5?

A Really I couldn't see it because it is the back of the person.

Q You saw the back of the person?

A Yes.

Q You did identify a photograph similar to this as the person you knew was David Bryant?

A Yes, sir.

Q Or as Randy Johnson?

A Yes, sir.

Q And the person you knew as Randy Johnson is David Bryant?

A Yes, sir.

MR. HOULIHAN: Thank you. That is all I have.

RE-CROSS-EXAMINATION BY MR. KREMER:

Q You testified that the picture that you saw of the man who you identified as Randy Johnson, you saw his back, is that correct?

- A Yes.
- Q And from that, from looking at his back, you were able to tell that that was Randy Johnson, is that correct?
- A Yes.
- Q And you told Mr. Jacobson that this was Randy Johnson, correct?
- A Randy Johnson, David Bryant, yes, sir.
- Q You did use the name Randy Johnson?
- A I'm not sure if I used the name Randy Johnson or David Bryant. I'm used to using his name as Randy Johnson.
- Q Isn't it a fact that the FBI man told you this was David Bryant?
- A What do you mean he told me he was David Bryant?
- Q Didn't Mr. Jacobson say to you that is David Bryant as you were looking at the pictures?
- A No, sir.
- Q He did not?
- A No.
- Q Are you sure of that?
- A To my knowledge now, you know, I say no, sir.
- MR. KREMER: Fine. Thank you, ma'am.
- MR. HOULIHAN: No questions.
- THE COURT: Thank you, Miss Bynoe.

(Witness excused.)

Excerpts from Trial Transcript (Vol. II).
Gwendolyn Alberta Walters for Government, Direct.

120

MR. HOULIHAN: Gwendolyn Walters.

GWENDOLYN ALBERTA WALTERS,
377 Maple Street, Rochester, New York, called as a witness
on behalf of the Government, and being first duly sworn,
testified as follows:

THE COURT: I suggest at the outset, Mr. Houlihan, that
you have the same problem on correlation.

MR. HOULIHAN: Your Honor, I will proceed on the basis of
in-court --

THE COURT: All right, you are going to reach the point,
I assume, of having to make that correlation.
All right, go ahead, we will reach it.

DIRECT EXAMINATION BY MR. HOULIHAN:

Q Miss Walters, by whom are you employed?

A County of Monroe.

Q How long have you worked for the County of Monroe?

A For six months.

Q And are you a native of Rochester?

A Yes.

Q I call your attention to the date of September 29, 1975,
were you shown some photographs by an FBI agent at that
time?

A Yes, I was.

Excerpts from Trial Transcript (Vol. II).
Gwendolyn Alberta Walters for Government, Direct.

121

Q Now, I show you Government's Exhibit 1 marked for identification, do you recognize that photograph?

A Yes, I do.

MR. KREMER: Objection, your Honor.

THE COURT: Why?

(Thereupon, the following conference ensued at the bench:

MR. KREMER: The witness was shown 7, 8, 9, 10 and No. 1 is not any of these.

THE COURT: I was 10 before, she said she saw 10.

MR. KREMER: Excuse me, forgive me. I will withdraw my objection.

(Thereupon, the conference at the bench was terminated.)

BY MR. HOULIHAN:

Q Do you recognize the individual depicted in that photograph?

A Yes, sir, I do.

Q Who is that?

A Harold Alexander.

Q How do you know Harold Alexander?

A He is my brother.

Excerpts from Trial Transcript (Vol. II).
Gwendolyn Alberta Walters for Government, Cross.

122

Q I show you Government's Exhibit 3 marked for identification, do you recognize the individual depicted in that photograph carrying a handgun and a bag?

A No, I do not.

Q I show you Government's Exhibit 5 marked for identification, do you recognize the individual depicted in that photograph carrying a handgun and a bag?

A Yes, I do.

Q Who is that?

A Randy Johnson.

Q Do you know Randy Johnson by any other name?

A David Bryant.

Q How long have you known David Bryant or Randy Johnson?

A For about two years.

Q Do you see the person as Randy Johnson and David Bryant in the courtroom today?

A Yes, I do.

Q Will you please point him out to the members of the jury?

A Sitting with the lawyer, with the orange shirt on.

MR. HOULIHAN: No further questions.

CROSS-EXAMINATION BY MR. KREMER:

Q Miss Walters, do you remember when you were shown these particular photographs?

A I don't remember the date, no. He said it was in

September of last year.

Q And I want to show you Defendant's Exhibit 4, and show you a date up here, and see if that refreshes your recollection as to when the interview might have been?

A No. Just I know it was in September.

Q All right. Now, you were shown how many photographs, Miss Walters?

A I'm not sure how many photographs I was shown.

Q Less than ten?

A Maybe.

Q As few as three?

A More than three, but I don't think it was ten.

Q Do you remember the name of the FBI agent that talked to you?

A No.

Q And did he talk to you at your house or did he talk to you here at the FBI headquarters?

A At my home.

Q Did he bring anybody with him?

A No.

Q And were the pictures the same size as you have seen today?

A I don't know what size the pictures were.

Q And he showed you these photographs and asked you who they were, did he not?

Excerpts from Trial Transcript (Vol. II).
Gwendolyn Alberta Walters for Government, Cross.

124

A. Yes.

Q. And he also suggested some names to you, did he not?

A. Well, yes and no.

Q. When he came to the photograph of Randy Johnson, he said to you, 'This is David Bryant,' did he not?

A. He told me it was David Bryant, yes.

Q. And he told this to you as you were looking at it, weren't you?

A. After I told him it was Randy Johnson.

Q. I see. So he is the one that told you that it was David Bryant, correct?

A. Correct.

Q. So that without the FBI telling you that at that particular time, you wouldn't have known the name David Bryant?

A. Right.

Q. And as you say, you identified this person as Randy Johnson?

A. Correct.

Q. How long had you known this man who you identified as Randy Johnson, how long a period of time?

A. Maybe two years.

Q. You talked with him from time to time?

A. Yes.

Q. On several occasions?

A. Yes.

Excerpts from Trial Transcript (Vol. II).
Gwendolyn Alberta Walters for Government, Redirect.

125

Q On each and every one of those occasions you knew him as Randy Johnson?

A Right.

MR. KREMER: Fine. Thank you, ma'am.

REDIRECT EXAMINATION BY MR. HOULIHAN:

Q Miss Walters, so that I've got it straight, at the time you were shown the photograph, you said that person in the photograph --

THE COURT: The testimony is clear, I think. She identified the person in Government's Exhibit 5 as Randy Johnson. She has identified the defendant in court as being that individual whom she identified as Randy Johnson.

MR. HOULIHAN: Thank you, your Honor. I have no further questions.

THE COURT: Thank you, Miss Walters.

(Witness excused.)

MR. HOULIHAN: Your Honor, I would like to recall Dulsenia Abrams. I believe she still may be here.

MR. KREMER: May I approach the bench?

THE COURT: Yes.

Excerpts from Trial Transcript (Vol. II).
Gwendolyn Alberta Walters for Government, Redirect.

126

(Thereupon, the following conference ensued at the bench:

MR. KREMER: Your Honor, we have had ample opportunity to examine and cross-examine this witness, and it appears that the Government has exhausted all of the possibilities with respect to this witness. I object to the introduction of this witness' testimony.

MR. HOULIHAN: I haven't exhausted the witness' testimony.

THE COURT: Is it necessary to recall her?

MR. HOULIHAN: It is necessary to recall her on the basis that Stella Bynoe identified the person in the photograph only as Wolf, to establish that the name Wolf is also Elisha Abrams, the person known as Wolf.

THE COURT: For that limited purpose.

MR. KREMER: I would except. The name Wolf doesn't appear to be such an uncommon name, such as Old Ironsides or Old Hickory or words that automatically connote a name without any further identification.

MR. HOULIHAN: May I show the photographs then, your Honor.

THE COURT: No. Well, the Government might have anticipated -- I can't say flatly the Government ought to have anticipated -- the need for this

Excerpts from Trial Transcript (Vol. II).
Gwendolyn Alberta Walters for Government, Redirect.

127

tie in of identification. I will allow this
limited inquiry of Miss Abrams.

MR. KREMER: Exception, your Honor.

THE COURT: Swear the witness over again.

D U L S E N I A A B R A M S , 62 Roxborough Road,
Rochester, New York, called as a witness on behalf of the
Government, and being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOULIHAN:

Q Miss Abrams, you testified previously that you were
married to Elisha Abrams, Jr. Does Elisha Abrams, Jr.
have any other nickname?

A Yes.

Q What is that nickname?

A Wolf.

Q I show you Government's Exhibit 3 marked for identifica-
tion, do you know who the individual is depicted in that
photograph?

A Wolf.

Q That is Wolf?

A Right, Elisha.

MR. HOULIHAN: That is all I have, thank you.

MR. KREMER: Thank you, Miss Abrams.

(Witness excused.)

* * * * *

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Direct.

327

was terminated.)

MR. HOULIHAN: Donna Vickers.

THE COURT: I don't know whether the jury heard my last words, which was that the particular exhibit, Government's Exhibit 38 I have received in evidence.

(Thereupon, Government's Exhibit 38, previously marked for identification, was received and marked in evidence.)

DONNA M. VICKERS, 250 Jayward Avenue, Rochester, New York, called as a witness on behalf of the Government, and being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOULIHAN:

Q Mrs. Vickers, by whom are you employed?

A Lincoln First Bank.

Q How long have you worked for them?

A Three years.

Q Calling your attention to the date of June 20, 1975, were you employed at the Lincoln First Bank on that day?

A Yes.

Q Which office is that?

A The East End Office.

BEST COPY AVAILABLE

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Direct.

320

Q And at approximately eleven o'clock in the morning of that day were you working in the teller area?

A Yes, I was.

Q And where in that area?

A I was working the auto window.

Q Now, where is the auto window in relation to the other tellers?

A The tellers' cages are all in a line down the corridor at the back of the lobby, and my cage is at the very end of that line. If my back was turned I couldn't see the lobby.

THE COURT: Which end?

THE WITNESS: The left.

BY MR. HOULIHAN:

Q If you were standing in the lobby and you were facing the tellers' cages, you would be on the left?

A Right.

Q Now, would you tell the Court and the Jury what happened about eleven o'clock on that date?

A I was working with a customer at the auto window, my back was to the lobby, and all of a sudden I heard a loud bang, and I turned and a man was jumping over the counter, and when he landed he had a gun. He approached me, took me by the left leg and pulled me up the aisle, and told me it was a robbery, and he told me to sit on

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Direct.

329

the floor and face the wall.

Q Now, when you heard the noise, did you know what caused that noise?

A Yes, the teller cage number 5, which ordinarily is my cage, it was closed, I was at the auto window, and the board was up, and while he was jumping, he knocked the board, which was a wooden board, and it hit the counter and made a loud bang.

Q When after hearing this noise you turned around, what was this person doing at the time you turned around?

A He was in the air, he was jumping over the counter.

Q And what was he wearing?

A He was wearing blue pants, dungarees, light blue shirt and sunglasses.

Q And now when he first jumped down, approximately how far away from you was he?

A About the end of that table there.

Q Talking about this table here?

A Yes.

Q It would be approximately this far?

A Right.

Q That would be approximately -- your Honor's measurement of the jury box, I believe, is nineteen feet?

THE COURT: That is right.

BY MR. HOULIHAN:

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Direct.

330

Q And this would be five or six feet from that, it would be about twenty-five feet?

A Yes.

Q Okay. When you first saw him he was about this far away?

A Yes.

Q What were you doing at that time?

A Just standing there looking at him.

Q What was he doing?

A He was in the air when I first saw him, and then he landed where you are and he came at me with the gun, and he was in a crouched position and came over to me and said this was a stick-up, and he pulled me by my left leg back up the aisle.

Q Before we get that far, he was here now, then he approached you, is that right?

A That is right.

Q And as he was approaching, what was he doing?

A He was just coming toward me with the gun in his hand.

Q Where was he looking?

A At me.

Q Where were you looking at?

A At him.

Q And then he came up and grabbed your left leg?

A Yes.

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Direct.

331

Q Then what did he do?

A He pulled me down the aisle.

Q And how far did he pull you down the aisle?

A To beyond that partition there.

Q You are speaking about the partition in the back of the courtroom, this partition?

A Yes.

Q And that would be approximately thirty, thirty-five feet?

A Yes.

Q And during the time that he was dragging you by your left leg, were you standing up or lying down?

A I was standing up, hopping on one foot.

Q And where was he looking as he was dragging you back the distance to that partition?

A At me.

Q And what were you looking at as he was dragging you back the distance of that separation?

A At him.

Q Now, at the time that you first saw him when he jumped over the teller cage, did you recognize him?

A I started to say, "Ray, what are you doing?"

Q Who is Ray?

A Ray is a regular customer of mine who I wait on every week. It's on a first name basis, 'Hi Ray, hi Donna.'

Q How long have you been working with that customer?

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Direct.

332

A. About three years.

Q And so when you first saw him you were going to say that, did you say that?

A No, because I was just getting ready to when he landed and pointed the gun at me, and I realized he was much shorter than Ray, it wasn't Ray.

Q Now, as he was approaching and you were looking at him, he was looking at you, and during the period of time that he dragged you back and you were looking at him and he was looking at you, were you able to make any observation about his hair?

A Yes. It seems to me that I thought it was a wig because it was --

MR. KREMER: I object to the words "I thought." The lady can testify as to what she saw or not. I object to the words "I thought."

THE COURT: No, this is within the realm of tolerable opinion evidence by lay witnesses, particularly female witnesses.

MR. KREMER: Thank you, your Honor.

BY MR. HOULIHAN:

Q You may answer.

A Okay. It just seemed to me it was a wig. It was very black and very shiny, it just seemed to be somewhat synthetic.

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Direct.

333

Q Mrs. Vickers, do you know any black people?

A Yes.

Q And would you say that you know a lot of black people or a few?

A Quite a few.

Q And do you have any experience working with hair of black people?

A Yes.

MR. KREMER: Objection, relevancy.

THE COURT: Overruled.

BY MR. HOULIHAN:

Q And what, if anything, have you done relative to black people's hair?

A I have rolled them in rollers, I have corn rolled them.

Q When you say "corn rolled," what is that?

A Corn braiding, you braid it down in different ways, you braid it tight to the head.

Q And are there other kinds of braiding which is done?

A Yes, pigtails, and like that.

Q Now, following the time that he dragged you the distance of some thirty, thirty-five feet, what did you do after he dragged you this distance?

A I was told to sit on the floor and face the wall, and I did that, and then sometime throughout that we were told to lay on the floor or something like that, I don't re-

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Direct.

374

member exactly, but I remember the teller and I were sitting there and holding one another.

Q Did there come a time that -- or during this period of time did you observe any other person in the bank, robbing the bank?

A When he was pulling me up the aisle something must have caught my attention in the lobby, because I glanced out quickly and I saw another man in the lobby.

Q Now, after the bank robbery was over did you speak with an FBI agent?

A Yes.

Q And at that time did you give the FBI agent a description of the person that you saw jumping over the counter?

A Yes, I did.

MR. KREMER: Objection. I would like to approach the bench.

THE COURT: All right.

(Thereupon, the following conference ensued at the bench:

MR. KREMER: At this point, your Honor, the next question should be, 'Do you recognize the person in the courtroom and, if so, point him out.' If I choose to cross-examine on the basis of the identification, then at that time he can get

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Direct.

335

into other parts of it. I may choose, I may not choose. It is irrelevant as to what description she gave. If she can point him out, fine. If she can't --

MR. HOULIHAN: I submit that is --

THE COURT: Well, the only thing is, whether or not she gave a particular description is not relevant. Whether or not she is now able to generally describe the person is pertinent as preliminary to the in-court identification. This can be tested by what she said in the earlier situation. I would suggest you ask her if she is able to describe generally what the man looked like and, if so, ask her if she can identify. Of course, you've got your photographs. All this other stuff -- you may feel you would rather bring something out on direct examination.

MR. HOULIHAN: Exactly right.

THE COURT: You can't play the tunes of the whole world.

MR. HOULIHAN: I think obviously this is going to be brought out on cross-examination.

THE COURT: Then there is no harm if you bring it out.

MR. BREMER: Thank you, your Honor.

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Direct.

336

(Thereupon, the conference at the bench
was terminated.)

BY MR. HOULIHAN:

Q Mrs. Vickers, think back now to the date of June 20,
1975. Are you able to now give a description of the
person that you saw on that day that dragged you back?

A Yes.

Q And what is that description?

A He was between five-six and five-eight, about one hundred
thirty, one hundred thirty-five pounds, he had small
features, small facial features --

Q Keep your voice up.

A Okay. That's about it.

Q And did you notice anything -- do you recall anything
concerning his face?

A He just had small features.

Q Do you recall anything about whether he was clean shaven?

MR. KREMER: Objection.

THE COURT: Sustained.

MR. KREMER: It is a leading and suggestive question.

THE COURT: Sustained.

MR. KREMER: Thank you, your Honor.

BY MR. HOULIHAN:

Q Other than the features, other than the fact that you

recall him having small features, do you recall anything else about his face?

A Yes, he had hair on his face.

Q Mrs. Vickers, I ask you to look around the courtroom and see if you can identify any individual in this courtroom that is the same individual that you saw that jumped over your cage and dragged you some thirty-five feet behind the taller cages?

A Yes.

Q Would you point him out to the Court and the Jury?

A He is sitting at the table.

Q And what is he wearing?

A A yellow shirt.

MR. HOULIHAN: That is all I have.

CROSS-EXAMINATION BY MR. KREMER:

Q Mrs. Vickers, the person that you pointed out was not wearing a three-piece blue suit?

A No.

Q Doesn't have a blue tie?

A No.

Q And there is nobody else at the table with Mr. Bryant and myself, is there?

A No.

Q And there is a United States Marshal over there, he doesn't

look like the man, does he?

A No.

Q Of course, he is white, isn't he?

A Yes.

Q And you testified on your examination that when you first took a look at the person who was coming over the counter, you said you thought the man's name was Ray?

A Yes.

Q And what did you say his last name was?

A Reeves.

Q And you say that Ray Reeves had banked with the Lincoln First people for a good period of time?

A As long as I have been there.

Q A couple of years?

A Three years.

Q You saw him every week?

A Yes.

Q And he had a couple of accounts or one account, do you recollect?

A I don't remember.

Q He was a banking customer?

A Yes.

Q And this is the person who you first thought was coming over the rail, is that correct?

A Yes.

- Q And in that split second before you realized it wasn't him, did you have a flash that it was a man who you had been banking with over the past couple of years --
- A Certainly.
- Q -- jumping over the rail at you?
- A Yes.
- Q It would be very unusual for someone who you knew so well to actually be in the process of robbing your bank?
- A Yes.
- Q And you said that you worked with black people before?
- A Yes.
- Q And you, of course, have no prejudice against black people?
- A No.
- Q And Ray -- I'm sorry, what was the gentleman's last name?
- A Reeves.
- Q Mr. Reeves stood approximately -- stands approximately how tall?
- A I would say about six-one.
- Q And about heavy is Mr. Reeves would you say?
- A Just a medium build.
- Q Just a medium build. Does he have hair on his face?
- A I don't recall.
- Q And is Mr. Reeves still a customer at the bank?
- A Yes.

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Cross.

340

- Q You still see him on a weekly basis?
- A Yes.
- Q Does he have hair on his face now, do you know?
- A I don't. I didn't pay any attention to it.
- Q I see. Now, this was a frightening experience, wasn't it?
- A Yes.
- Q You fortunately have never been in this kind of an experience before, have you?
- A No.
- Q Certainly it is not an experience that you hope you will ever have to repeat?
- A Right.
- Q And you testified that the man who jumped over the counter told you this was a bank robbery?
- A Yes.
- Q And you have had special training from the bank with respect to bank robberies, haven't you?
- A Oh, yes, but you never know how you are going to react.
- Q And there is always the possibility that something dreadful can happen during a bank robbery, as far as your own personal security is concerned?
- A Yes.
- Q And at the time that this incident occurred did you have any people dependent upon you?

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Cross.

341

A Yes.

Q And how many dependents did you have at that time?

A Two.

Q Big or small?

A Small.

Q And it is a fair statement that you were worried what would happen to them if something happened to you?

A Actually I didn't have time to think about that.

Q You didn't have time to think about that. In retrospect that thought has probably occurred to you, hasn't it?

A -- that time it didn't.

Q No.

A Since then, yes.

Q Since then, sure. Now, you indicated that the man who jumped over the rail was coming at you in a crouched position?

A Yes.

Q And you indicated that you heard conversations going on in the lobby, is that correct?

A Yes.

Q And that you even picked out some other individual who you subsequently identified as being -- subsequently picked out some other individual who was a person robbing this bank, is that correct?

A Yes.

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Cross.

342

Q And you were observing the person out in the lobby?

A No, I wasn't observing him, I just had a quick glance at him.

Q And of course, during a time like this, and I don't mean to insult your intelligence, obviously you did not have a stop watch to time every sequence of the events?

A No.

Q No, of course not. Now, you indicated that -- before you were interrupted -- you indicated that there came a time when you gave a description of the person who jumped over the cage to the FBI?

A Yes.

Q I'm going to show you Government's Exhibit 34, a copy of it, and ask you to take a look at that description.

A (Witness examines document.)

Q Now, in there you described the age of the person who leaped over teller's cage number 5 as being between twenty-eight and thirty?

A Yes.

Q And you described also that -- you didn't mention anything about a wig in that description that you gave the FBI, did you?

A No.

Q And you used a different terminology, as a matter of fact. Can you tell us what terminology you used with respect

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Cross.

343

to that person's hair?

A I said there a medium bush haircut.

Q A medium bush haircut, and there is nothing in there
N.B. 111 about small facial features, is there?

A No.

Q And you used the term "unshaven," is that correct, in
that description to the FBI?

A Well, I don't remember using that word. Maybe that is
the terminology.

Q But the word "unshaven" appears in the report which is
Government's Exhibit 34, correct?

A Yes.

Q So that if you did not say it, then somehow that word
appeared through some operation, correct?

A Yes.

Q And there is no description there, "He had hair on his
face," is there?

A No, but I'm sure that's what I said.

Q Now, there is nothing in the report there in which you
M.B. 111 say, 'Another teller and I were sitting there holding
one another,' that doesn't appear there?

A Not in this one, no.

Q Not in this one, all right. Now, these are all events
which took place on June 20, is that correct?

A Yes.

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Cross.

344

- Q That was 1975?
- A Right.
- Q And that is almost a year and a half ago, correct?
- A Yes.
- Q Now, there came a time when you participated in a courtroom proceeding on June 25, 1975?
- A Yes.
- Q And that courtroom proceeding on June 25 was five days after the June 20 proceeding --
- A Yes.
- Q -- that you just talked about?
- A Yes.
- Q I am going to show you Page 6 of those proceedings, and I am going to ask you, please, to take a look at that Page 6.
- A (Witness examines document.)
- Q Do you recall being asked by the District attorney -- were you asked to give a description, were you asked to tell the district attorney any identifying features with respect --
- A Yes.
- Q And what identifying features did you identify at that point?
- MR. HOULIHAN: May I have the page on that?
- MR. KREMER: Page 6.

MR. HOULIHAN: Your Honor, I object to that. There is nothing in there that says identifying features on that page.

MR. KREMER: Excuse me, sir. Yes, "Can you give me any identifying features?"

MR. HOULIHAN: Sorry, I thought you were referring to the lower portion of the page.

MR. KREMER: I'm sorry.

MR. HOULIHAN: I apologize. I will withdraw my objection.

BY MR. KREMER:

Q The question then is, you were asked, "Can you give me any identifying features?"

A Yes.

Q What was your response?

A "He had hair on his face and sunglasses, tinted glasses, they were not very dark."

Q When the question was asked, "Can you give me any identifying features," the first word that you uttered was?

A "No."

Q No.

A Then I went on to --

Q Oh, sure, and then you were asked to look throughout the courtroom and see if there was any person there that you recognized as being the one at the bank?

A Right.

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Redirect.

346

Q And your response to that was?

A "No."

Q No. Now, that was a proceeding which involved David Bryant, is that not correct?

A Right.

Q And at that particular time when you completed that hearing, it is a fact that you had not identified David Bryant as being the person who was in the bank, is that not correct?

A Right.

Q Now, is it a fair statement that your memory would have been better on June 25, 1975 than it would be today?

A Well, I probably will always remember the incident.

MR. KREMER: Would you read back the question?

(Thereupon, the last question was read by reporter.)

THE WITNESS: It is really difficult to answer that question.

BY MR. KREMER:

Q Then you decline to answer the question?

THE COURT: She said she is unable to.

MR. KREMER: Fine, thank you.

REDIRECT EXAMINATION BY MR. HOULIHAN:

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Redirect.

347

Q Mrs. Vickers, at the time of this examination, the preliminary hearing which you testified to, which Mr. Kremer was asking you about, you made the statement to Mr. Kremer that you did not identify anyone there is being the person that you saw in the bank. Would you explain to the Court and Jury why you did not make any identification at that time?

A Well, when I saw him in court that day his appearance was not the same as it was when he was -- when the bank robbery occurred. His hair was corn rolled tight down to his head, and during the bank robbery the hair was -- you know -- I assume it was a wig, it was puffy, he had sunglasses on. At the time that I saw him in court five days afterward I didn't feel that I could one hundred per cent say, 'Yes, that is him.'

Q Now, in addition to his hair being different, being in corn rolls, did he have hair on his face at that time?

A No, he didn't, he was clean shaven at that time. It seemed like -- I don't know if his hair was pulled back -- his bone structure seemed to be more obvious than the other time. He just didn't look exactly the same, not enough so I could say one hundred per cent, 'Yes, it is definitely him.'

Q Now, at the time you gave the description to the FBI, and Mr. Kremer -- Government's Exhibit 34 -- Mr. Kremer

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Redirect.

349

asked you some questions regarding that, and it says here "unshaven." Do you recall using that word?

A. There was a lot of people interviewing me. I don't recall using that word. It seems more like I would have said he had hair on his face.

Q. Now, nowhere in Government's Exhibit 34 are there any quotes?

A. No.

Q. Was that ever read to you?

A. No.

Q. Did you ever sign it?

A. No.

Q. Then it would be a fair statement that this is an interpretation of what you said at that time?

A. Yes.

Q. Now, the period of time that you first saw the individual as he was leaping over the counter, and he came up to you and dragged you back down, approximately how many minutes elapsed during that period?

A. It is really hard to say. I would guess between sixty and ninety. He jumped over the counter, came down and got me --

THE COURT: Minutes?

THE WITNESS: No, seconds. And I hopped back to the other area, I would say between sixty and ninety

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Redirect.

349

seconds.

BY MR. HOULIHAN:

Q And throughout this period of time you were looking at him and he was looking at you?

A Yes.

Q Now, following the bank robbery did you go down to the Rochester Police Department?

A Yes.

Q And how long were you there?

A Oh --

THE COURT: I think you are getting beyond the cross-examination, Mr. Houlihan.

BY MR. HOULIHAN:

Q Okay. Now, I call your attention now to yesterday afternoon. Now, subsequent to the hearing, which Mr. Kremer cross-examined you on, when you observed Mr. Bryant with corn rollers in his hair and clean shaven, have you seen David Bryant?

A Yes.

Q And when was that?

A Yesterday.

Q Okay. Now, prior to yesterday have you -- prior to yesterday did you see him?

A No.

MR. KREMER: Objection, beyond the scope of the cross-exam-

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Redirect.

373

ination.

THE COURT: Yes, it certainly is. It is something that might have been part of the cross-examination but was not and consequently is not part of the redirect examination.

MR. HOULIHAN: Your Honor, I would submit to the Court that Mr. Kremer questioned her identification in court today, and I think in view of -- I believe it is Section 801 of the new Federal Rules --

THE COURT: You may do it. Certainly the interrogation is the purpose of which that rule speaks. You can do it if you want.

BY MR. HOULIHAN:

Q Yesterday afternoon were you shown a spread of photographs, a number of photographs?

A Yes.

MR. KREMER: Objection.

THE COURT: This is a different question.

MR. HOULIHAN: That was leading up to --

THE COURT: We had an objection to the interrogation about seeing the defendant yesterday. Now you are going to a different topic.

MR. HOULIHAN: Your Honor, I submit that was the question preliminary to the previous identification.

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Redirect.

351

THE COURT: All right, go ahead.

MR. HOULIHAN: I apologize.

THE COURT: Whether it's different or not, we have a new question.

MR. KREMER: I object to that again as being outside the scope of the cross-examination.

THE COURT: Yes, sustained.

BY MR. HOULIHAN:

Q I show you Government's Exhibit 38 marked for identification, have you seen that photograph before?

A Yes.

MR. KREMER: Objection, beyond the scope of the cross-examination on redirect examination.

THE COURT: Yes, I will sustain the objection.

MR. HOULIHAN: If the Court please, may we approach the bench?

THE COURT: Yes.

(Thereupon, the following conference ensued at the bench:

MR. HOULIHAN: Your Honor, extra-judicial identification according to 801 is permitted when the defendant -- where the defense attorney has raised a question as to the reliability of in-court identification. I submit that Mr.

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Redirect.

352

Kremer -- the total of Mr. Kremer's cross-examination was how could you identify after

MR. KREMER:

I have 801, it says no such thing.

THE COURT:

My sustaining of it is based on -- I have to admit -- in large part on the effort to move the case along. My evaluation of such testimony as Mrs. Vickers would give now, which I assume would be what she gave on the hearing outside of the jury, certainly would detract from the total credibility of her identification, rather than operating in the other direction. It seems to me there is no purpose of going into this on the part of the Government. Mr. Kremer saw fit not to go into it.

MR. HOULIHAN:

I submit, your Honor, that the only reason that wasn't gone into on direct examination was because of the Court's limitation on my ability to show her certaintiness of the identification, and the purpose of the objection was to prohibit me from doing that, and the effect of this is to give the defendant his cake and let him eat it, too.

THE COURT:

It didn't stop you from going into any photographic identification on direct examination.

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Redirect.

383

You went into it, the indication was that it could be gone into. Now, all I am saying is that I see no purpose of going into it, I don't like to waste the time of going into something that Mr. Kremer might well like to have in his case. Certainly the fact she makes an identification of someone who has the appearance the defendant had in Government's Exhibit 38 takes away from the reliability of her in-court identification now when you play that back against her inability to identify him on June 25 when again he was without a wig or whatever his hair was like on June 20. I won't bar you at all, but if you wanted to use it you should have gone into it on direct examination.

(Thereupon, the conference at the bench was terminated.)

BY MR. HOULIHAN:

Q I show you Government's Exhibit 5 marked for identification, do you recognize the individual depicted in that photograph?

A Yes.

Excerpts from Trial Transcript (Vol. III).
Donna M. Vickers for Government, Redirect.

354

Q And who is that individual?

A David Bryant.

Q And is that the person that you saw in the bank on that day?

A Yes.

Q That is the person that you identified in court here today, is that right, as the defendant?

A Yes.

MR. HOULIHAN: Thank you. I have no further questions.

MR. KREMER: Thank you, Mrs. Vickers.

THE COURT: All right, Mrs. Vickers, thank you.

(Witness excused.)

MR. HOULIHAN: Your Honor, that is the last Government witness. I would like only the opportunity to go through the exhibits to make sure that I have moved the admission --

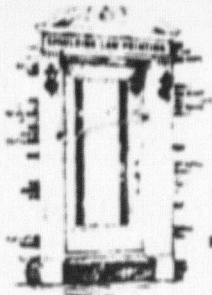
THE COURT: What I have marked in evidence are 1 through 6, 8, 12, 14 through 20, 22 and 23, 28, 35, 36, 38 and 49.

MR. HOULIHAN: The Government rests its case.

MR. KREMER: Motions, your Honor, prior to the defendant's case?

THE COURT: All right. I will have to ask you to step

* * * * *



SPAULDING LAW PRINTING CO.

ESTABLISHED
1881

313 MONTGOMERY STREET • SYRACUSE, N.Y. 13202 • PHONE AC 315 HA2-4805

RUSSELL D. HAY, owner

LETTER OF TRANSMITTAL

Date: April 1, 1977

HON. A. DANIEL FUSARO, Clerk
U.S. Court of Appeals, Second Circuit
Room 1702 U.S. Court House
Foley Square
New York, New York 10007

Re: U.S.A. vs. David Bryant

Index No.:

Dear Sir:

Enclosed please find copies of the above entitled for filing as follows:

[XXX] ~~XXXXXX~~

[XXX] ~~XXXXXX~~

[XXX] ~~Original Record enclosed~~

[XXX] ~~Original Record to be made under separate cover~~

[10] Appendix

Very truly yours

Everett J. Rea

cc: Richard J. Arcara, Esq.

Affidavit of Service

Records and Briefs
For State and Federal Courts
Established 1881

313 Montgomery Street
Syracuse, New York 13202
(315) 422-4805

Russell D. Hay/President
Everett J. Rea/General Manager

Spaulding Law Printing

April 1, 1977

Re: U.S.A. vs. David Bryant

State of New York)
County of Onondaga ss.:
City of Syracuse)

EVERETT J. REA,

Being duly sworn, deposes and says: That he is associated with Spaulding Law Printing Co. of Syracuse, New York, and is over twenty-one years of age.

That at the request of **Richard J. Arcara**

Attorney(s) for **U.S. Attorney for the Western District of N.Y.**
Attorney for Appellee,

☒ he personally served three (3) copies of the printed ☐ Record ☐ Brief ☒ Appendix
of the above entitled case addressed to:

ALFRED P. KREMER, ESQ.
Attorney at Law
200 Times Square Building
Rochester, New York 14614

☒ By depositing true copies of the same securely wrapped in a postpaid wrapper in a Post Office maintained by the United States Government in the City of Syracuse, New York, on
April 1, 1977.
☐ By hand delivery

Everett J. Rea
EVERETT J. REA

Sworn to before me this **1ST** day of **April, 1977.**

Thomas J. Hutz
Notary Public
Commissioner of Deeds

cc: Richard J. Arcara , Esq.